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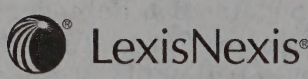

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TITLE 16

PRACTICE, PROCEDURE, AND COURTS

(CHAPTERS 1-17 IN VOLUME 14A; CHAPTERS 18-54 IN VOLUME 14B; CHAPTERS 55-89 IN VOLUME 15)

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CHAPTER.

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CHAPTER.

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY (CONT'D)

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SUBCHAPTER 1 — GENERAL PROVISIONS

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-104. Commitment of women for felony.

Women who are convicted of or who plead guilty to the commission of felonies may be committed to the Division of Correction by any court of criminal jurisdiction.

History. Acts 1939, No. 117, § 1; 1971, No. 72, § 1; 1971, No. 195, § 1; A.S.A. 1947, § 46-804; Acts 2019, No. 910, § 859; 2021, No. 475, § 19.

Amendments. The 2019 amendment substituted "Department of Corrections" for "Department of Correction."

The 2021 amendment substituted "Division of Correction" for "Department of Corrections".

16-90-106. Informed defendant for felony required.

CASE NOTES

ANALYSIS

Allocution.
Habeas Corpus.

Allocution.

Defendant's argument that he was denied a meaningful opportunity for allocution was rejected where he did not object to the trial court's failure to ask him if he had any legal cause to show why judgment should not be pronounced against him; also, defendant suffered no prejudice because he testified during the sentencing hearing. Gamet v. State, 2017 Ark. App. 206, 518 S.W.3d 130 (2017).

Habeas Corpus.

Because petitioner failed to demonstrate that the sentence was illegal on its face or the trial court lacked jurisdiction, he could not prevail on his appeal of the order dismissing his pro se petition for a writ of habeas corpus; a violation of this section does not implicate the trial court's jurisdiction or render a sentence illegal. Johnson v. Kelley, 2019 Ark. 230, 577 S.W.3d 710 (2019).

16-90-107. Fixing of punishment generally.

CASE NOTES

ANALYSIS

Applicability.
Modification of Sentence.

Applicability.

Subsection (d) of this section did not apply to defendant's case where the jury fixed his sentences at 20 years' imprisonment on a battery count and 10 years' imprisonment on a firearm count, recommended the terms be served consecutively, and its recommendation of an alternative sentence of probation was not binding on the court. McElroy v. State, 2018 Ark. App. 342, 553 S.W.3d 182 (2018).

Modification of Sentence.

Defendant could not show prejudice from the denial of his mistrial and continuance motions, which were made after the State interrupted defense counsel's closing argument to point out that the Y felony jury instruction was incorrect; although defense counsel did have to recalibrate his closing argument, it was effective, and even if the jury deliberated with the erroneous instruction and returned a sentence of a fine only on the Y felony, the circuit court would have had to correct it. Baker v. State, 2021 Ark. App. 117, 618 S.W.3d 462 (2021).

16-90-111. Correction or reduction of sentence.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, A Jurisdictional Skirmish in the Arkansas Appellate Courts: Rule 37 Post-Conviction Appeals and the Importance of Supreme Court Rule 1-2(h), 41 U. Ark. Little Rock L. Rev. 319 (2019).

CASE NOTES

ANALYSIS

Applicability.
Considered as a Petition for Postconviction Relief.
Sentence Not Facially Illegal.
Timeliness.

Applicability.

Petitioner's allegations of mere trial error were not within the purview of this section, and thus, petitioner's allegations that the sentences were imposed without proper hearings or forms were not cognizable. Lukach v. State, 2017 Ark. 128, 516 S.W.3d 711 (2017).

Considered as a Petition for Postconviction Relief.

Supreme Court did not have to defer to the trial court to make the determination that defendant's sentence was illegal because whether the judgment was facially illegal was a matter of law, and it was not a question of fact best resolved through the trial court's determination. Hallman v. State, 2018 Ark. 336, 561 S.W.3d 305 (2018).

Sentence Not Facially Illegal.

Trial court did not err in denying relief under this section where allegations of ineffective assistance of counsel, insuffi-

cient evidence, and constitutional error could not establish that the sentence was illegal on its face. Leach v. State, 2017 Ark. 176, 518 S.W.3d 670 (2017).

Circuit court did not clearly err in denying the prisoner relief under this section where his claim that the judge acted in excess of his authority was not a question of subject-matter jurisdiction. Lukach v. State, 2018 Ark. 208, 548 S.W.3d 810 (2018).

Because defendant expressly waived presentation of proof as to both charges and the enhancement, the circuit court's denial of his petition to correct an illegal sentence was not clearly erroneous; the circuit court had found that defendant entered a negotiated plea of nolo contendere to false imprisonment and manslaughter, pleaded to the manslaughter charge as a habitual offender, and waived the presentation of proof and evidence as to the charges to which he was eventually sentenced as well as the enhancement of the charges. Johnson v. State, 2019 Ark. App. 68, 571 S.W.3d 519 (2019).

Timeliness.

Since the portion of this section that provides a means to challenge a sentence at any time on the ground that the sentence was illegal on its face remains in effect despite Ark. R. Crim. P. 37.2(c), appellant's argument that his sentence was illegal on its face was not untimely. Neely v. State, 2020 Ark. App. 547, 615 S.W.3d 392 (2020).

16-90-115. Suspension of sentence.

CASE NOTES

Cited: City of Little Rock v. Nelson, 2020 Ark. 34, 592 S.W.3d 633 (2020).

16-90-118. Duty of court to report to Division of Correction.

(a) Whenever any person is sentenced to the Division of Correction, it shall be the duty of the court before which he or she has been convicted to cause to be made and transmitted to the agent of the division a short report of the circumstances attending the offense, particularly those which tended to aggravate or extenuate the offense.

(b) The agent shall file and preserve the report.

History. Acts 1838, § 11, p. 116; C. & M. Dig., § 3242; Pope's Dig., § 4082; A.S.A. 1947, § 43-2323; Acts 2019, No. 910, § 860.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in the section heading and in (a); and substituted "division" for "department" in (a).

16-90-120. Felony with firearm.

(a) Any person convicted of any offense that is classified by the laws of this state as a felony who employed any firearm of any character as a means of committing or escaping from the felony, in the discretion of the sentencing court, may be subjected to an additional period of confinement in the Division of Correction for a period not to exceed fifteen (15) years.

(b) The period of confinement, if any, imposed under this section shall be in addition to any fine or penalty provided by law as punishment for the felony itself. Any additional prison sentence imposed under the provisions of this section, if any, shall run consecutively and

not concurrently with any period of confinement imposed for conviction of the felony itself.

(c) A separate appeal may be taken to the Supreme Court from the imposition of the sentence, if any, provided for by this section, and any appeal shall be in the manner prescribed for appellate review of conviction of criminal offenses in general. However, the sole and only question to be decided upon the separate appeal shall be whether the evidence warrants a finding that the defendant actually employed a firearm in the commission of, or escape from commission of, the felony for which he or she stands convicted.

(d) Any reversal of a defendant's conviction for the commission of the felony shall automatically reverse the prison sentence which may be imposed under this section.

(e)(1) For an offense committed on or after July 2, 2007, notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, except as provided in subdivision (e)(1)(B)(ii) of this section, any person who is sentenced under subsection (a) of this section is not eligible for parole or community correction transfer until the person serves:

(A) Seventy percent (70%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section if the underlying felony was any of the following:

(i) Murder in the first degree, § 5-10-102;

(ii) Kidnapping that is a Class Y felony, § 5-11-102;

(iii) Aggravated robbery, § 5-12-103;

(iv) Rape, § 5-14-103;

(v) Causing a catastrophe, § 5-38-202(a);

(vi) Trafficking methamphetamine, § 5-64-440(b)(1);

(vii) Manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401; or

(viii) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5);

(B)(i) Except as provided in subdivision (e)(1)(B)(ii) of this section, seventy percent (70%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section if the underlying felony was any of the following:

(a) Manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401;

(b) Possession of drug paraphernalia with the intent to manufacture methamphetamine, former § 5-64-403(c)(5); or

(c) Trafficking methamphetamine, § 5-64-440(b)(1).

(ii) The person is eligible for parole or community correction transfer if the person serves at least fifty percent (50%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section for the offenses listed in subdivision (e)(1)(B)(i) of this section with credit for the award of meritorious good time under § 12-29-201 unless the person is sentenced to a term of life imprisonment. The time served by any person under this subdivision

(e)(1)(B)(ii) shall not be reduced to less than fifty percent (50%) of the person's original sentence under subsection (a) of this section; or

(C) Either one-third (⅓) or one-half (½) of the term of imprisonment to which the person is sentenced under subsection (a) of this section with credit for meritorious good time and depending on the seriousness determination made by the Arkansas Sentencing Commission if the underlying felony was any felony not listed in subdivision (e)(1)(A) or subdivision (e)(1)(B) of this section.

(2) The sentencing court may waive subdivision (e)(1) of this section if all of the following circumstances exist:

(A) The defendant was a juvenile when the offense was committed;

(B) The defendant was merely an accomplice to the offense; and

(C) The offense was committed on or after July 31, 2007.

(f) A person who commits the offense of possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, after July 27, 2011, shall not be subject to the provisions of this section.

History. Acts 1969, No. 78, §§ 1-3; 1973, No. 61, § 1; A.S.A. 1947, §§ 43-2336 — 43-2338; Acts 2007, No. 1047, § 5; 2011, No. 570, § 76; 2019, No. 910, § 861.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a).

CASE NOTES

ANALYSIS

Constitutionality.
Appeal.
Evidence Sufficient.
Sentencing.

Constitutionality.

Defendant, who was charged with first-degree murder and convicted by the jury of the lesser-included offense of manslaughter, was sentenced to 10 years for the manslaughter conviction and his sentence enhanced by 15 years under this section. Even if appellant had preserved for review the argument that the firearm enhancement violated double jeopardy, the argument failed on the merits as the enhancement was not a substantive criminal offense, but a sentencing enhancement specifically intended to provide additional punishment for the use of a firearm during the commission of the underlying felony itself. Campbell v. State, 2017 Ark. App. 340, 525 S.W.3d 465 (2017).

Appeal.

Defendants' argument that the firearm-enhancement statute was a lesser-included offense of any crime for which use of a firearm was an element, thereby making their sentences for the underlying felonies and the firearm enhancements illegal, was unpreserved for review because it was not properly framed as a challenge to an illegal sentence; the argument was a double-jeopardy challenge, and it had already been directly addressed and rejected. Anderson v. State, 2017 Ark. App. 300 (2017).

Defendant's argument that he received an illegal sentence with respect to a firearm enhancement was not preserved for review. Defendant raised no objection to the prospect of receiving an enhanced sentence at his trial or his sentencing hearing. Conley v. State, 2021 Ark. App. 57 (2021).

Evidence Sufficient.

Circuit court properly sentenced defendant for capital murder, unlawful discharge of a firearm from a vehicle, and terroristic act, and his sentence was properly enhanced for employing a firearm in the commission of a felony; although the jury did not complete the verdict form concerning utilizing a firearm in the commission of a felony, the findings of guilt sufficiently triggered the sentence en-

hancement. Martinez v. State, 2019 Ark. 85, 569 S.W.3d 333 (2019).

Sentencing.

Where defendant was found guilty of first-degree murder and 29 counts of terroristic acts and the jury found beyond a reasonable doubt in the guilt phase that defendant or an accomplice employed a firearm as a means of committing first-degree murder but in the sentencing phase sentenced defendant to firearm enhancements in connection with the counts for terroristic acts, the 29 one-year sentences imposed as firearm enhancements were reversed because the jury did not find beyond a reasonable doubt that defendant employed a firearm as a means of committing terroristic acts. Ellis v. State, 2019 Ark. 286, 585 S.W.3d 661 (2019).

Cited: Liggins v. State, 2016 Ark. 432, 505 S.W.3d 191 (2016).

16-90-121. Second or subsequent felony with firearm.

Any person who is found guilty of or pleads guilty or nolo contendere to a second or subsequent felony involving the use of a firearm shall be sentenced to a minimum term of imprisonment of ten (10) years in the Division of Correction without eligibility of parole or community correction transfer but subject to reduction by meritorious good-time credit.

History. Acts 1981, No. 583, § 1; A.S.A. 1947, § 43-2336.1; Acts 2001, No. 1783, § 1; 2019, No. 910, § 862.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction".

CASE NOTES

Sentence Improper.

Defendant's firearm enhancement sentence under this section was illegal where it was imposed as an additional sentence to his life sentence for second-degree murder, and the statute did not authorize an additional 10 years' imprisonment, but rather mandated that a defendant serve a minimum of 10 years in prison before becoming eligible for parole. Gentry v. State, 2021 Ark. 26 (2021).

16-90-122. Post-conviction release of nonviolent offenders.

(a) Except as provided in subsection (b) of this section, any circuit judge may authorize the temporary release of an offender in the county sheriff's custody who has:

(1) Been found guilty of or pleaded guilty or nolo contendere to a nonviolent felony offense in circuit court; and

(2) Been sentenced to a term of imprisonment and committed to the Division of Correction or the Division of Community Correction and is awaiting transfer to the Division of Correction or the Division of Community Correction.

(b) A circuit judge shall not authorize the temporary release of an offender under subsection (a) of this section if the offender has been found guilty of or pleaded guilty or nolo contendere to a:

(1) Class Y felony offense listed in § 16-93-618; or

(2) Felony sex offense listed in the definition of "sex offense" in § 12-12-903.

(c)(1) The circuit judge may authorize the release under the terms and conditions that he or she determines are necessary to protect the

public and to ensure the offender's return to custody upon notice that bed space is available at the Division of Correction or the Division of Community Correction.

(2) The circuit judge may require a cash or professional bond to be posted in an amount suitable to ensure the offender's return to custody.

History. Acts 2005, No. 1261, § 1; 2007, No. 279, § 1; 2011, No. 570, § 77; 2019, No. 910, §§ 863, 864.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout (a)(2) and in (c)(1).

Subchapter 2 — Multiple Convictions

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-201. Punishment for second or subsequent convictions generally.

Any person convicted of an offense which is punishable by imprisonment in the Division of Correction who shall subsequently be convicted for another offense shall be punished as follows:

(1) If the second offense is such that, upon a first conviction, the offender could be punished by imprisonment for a term less than his or her natural life, then the sentence to imprisonment shall be for a determinate term not less than one (1) year more than the minimum sentence provided by law for a first conviction of the offense for which the defendant is being tried, and not more than the maximum sentence provided by law for this offense, unless the maximum sentence is less than the minimum sentence plus one (1) year, in which case the longer term shall govern;

(2) If the third offense is such that, upon a first conviction, the offender could be punished by imprisonment for a term less than his or

her natural life, then the person shall be sentenced to imprisonment for a determinate term not less than three (3) years more than the minimum sentence provided by law for a first conviction of the offense for which the defendant is being tried, and not more than the maximum sentence provided by law for the offense, unless the maximum sentence is less than the minimum sentence plus three (3) years, in which case the longer term shall govern; and

(3)(A) If the fourth or subsequent offense is such that, upon a first conviction, the offender could be punished by imprisonment for a term less than his or her natural life, then the person shall be sentenced to imprisonment for the fourth or subsequent offense for a determinate term not less than the maximum sentence provided by law for a first conviction of the offense for which the defendant is being tried, and not more than one and one-half (1½) times the maximum sentence provided by law for a first conviction.

(B) However, any person convicted of a fourth or subsequent offense shall be sentenced to imprisonment for no less than five (5) years.

History. Acts 1953, No. 228, § 1; 1967, No. 639, § 1; A.S.A. 1947, § 43-2328; Acts 2019, No. 910, § 870.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in the introductory language.

16-90-202. Punishment for third conviction for certain offenses.

(a) When any person shall be convicted of murder, rape, carnal abuse, or kidnapping and it shall be shown that the person has been twice previously convicted of any of the above-mentioned crimes in this state or any other state, upon the third conviction the person shall be deemed a habitual criminal and shall be sentenced to life imprisonment in the Division of Correction.

(b) However, nothing in this section shall be construed to abolish or otherwise affect punishment by death for crimes which are punishable by death.

History. Acts 1967, No. 212, § 1; A.S.A. 1947, § 43-2328.1; Acts 2019, No. 910, § 871.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a).

Subchapter 4 — Execution of Sentence — Confinement

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-401. Delivery of copy of judgment to county sheriff.

Where a judgment of confinement, either in the Division of Correction or county jail, is pronounced, a certified copy of the judgment must be furnished forthwith to the county sheriff, who shall thereupon execute it, and no other warrant or authority is necessary to its execution.

History. Crim. Code, § 288; C. & M. Dig., § 3253; Pope's Dig., § 4097; A.S.A. 1947, § 43-2601; Acts 2019, No. 910, § 872.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction".

16-90-402. Delivery of defendant and copy of judgment to proper officials.

(a)(1) In executing a judgment of confinement, the county sheriff shall deliver the defendant with a certified standardized copy of the sentencing order to the Division of Correction, Division of Community Correction, or to another detention facility, as indicated in the sentencing order.

(2) If electronic filing of court records has been implemented by the circuit clerk in the county where the defendant's conviction occurred, the standardized copy of the sentencing order may be electronically transmitted by the circuit clerk to the Division of Correction, the Division of Community Correction, or to another detention facility, as indicated in the sentencing order.

(b) The standardized copy of the sentencing order shall be developed by representatives from the Division of Correction, the Administrative Office of the Courts, the Arkansas Sentencing Commission, and the Prosecutor Coordinator's office.

History. Crim. Code, § 293; C. & M. Dig., § 3264; Pope's Dig., § 4109; Acts 1985, No. 975, § 1; A.S.A. 1947, § 43-2602; Acts 2013, No. 1335, § 2; 2019, No. 910, § 873.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

RESEARCH REFERENCES

Ark. L. Rev. Alexis Stevens, Same Grid, Different Results: Criminal Sentencing Disparities Between Arkansas Counties, 73 Ark. L. Rev. 183 (2020).

16-90-403. Power of county sheriff to prevent escape, etc.

In conveying the defendant to the Division of Correction, the county sheriff shall have all the powers of preventing an escape, of resisting an effort to rescue the defendant, of recapturing the defendant, and of summoning persons to his or her aid that the county sheriff would have in executing a warrant of arrest in his or her county.

History. Crim. Code, § 294; C. & M. Dig., § 3263; Pope's Dig., § 4108; A.S.A. 1947, § 43-2603; Acts 2019, No. 910, § 874.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction".

Subchapter 5 — Execution of Sentence — Death Penalty

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-502. Conduct of execution — Definitions.

CASE NOTES

Counsel.

This section does not require that only one attorney be permitted to witness a client's execution in the viewing area. Therefore, Arkansas law does not mandate a Department of Correction regulation to that effect. McGehee v. Hutchinson, No. 4:17-cv-00179 KGB, 2017 U.S. Dist. LEXIS 57836 (E.D. Ark. Apr. 15, 2017), vacated, 854 F.3d 488 (8th Cir. 2017), cert. denied, 137 S. Ct. 1275, 197 L. Ed. 2d 746 (2017).

Prison execution policies did not provide to death row prisoners a sufficient alternative means to effectuate their rights to counsel and access to the courts. In effect, the viewing policies—which would not allow for the lone attorney permitted in the viewing room to continue witnessing the execution should that attorney need to

petition a court during the execution—rendered as mutually exclusive the prisoners' right to have counsel witness the execution and the prisoners' right to access the courts. McGehee v. Hutchinson, No. 4:17-cv-00179 KGB, 2017 U.S. Dist. LEXIS 57836 (E.D. Ark. Apr. 15, 2017), vacated, 854 F.3d 488 (8th Cir. 2017), cert. denied, 137 S. Ct. 1275, 197 L. Ed. 2d 746 (2017).

16-90-503. Certification of execution.

(a) The Director of the Division of Correction shall certify the fact of the execution of the condemned felon to the clerk of the court by which the sentence was pronounced, who shall file the certificate with the papers of the case and enter it upon the records of the case.

(b) If the office of director is abolished, the duties devolving on him or her shall be performed by any other person selected by any board or commission having charge of the Division of Correction.

History. Acts 1913, No. 55, § 5; C. & M. Dig., § 3257; Pope's Dig., § 4102; A.S.A. 1947, § 43-2616; Acts 2019, No. 910, § 875.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a) and (b).

16-90-506. Reprieve, new trial, etc.

(a)(1) Should the condemned felon, while in the custody of the Director of the Division of Correction, be granted a reprieve by the Governor or obtain a writ of error from the Supreme Court or should the execution of the sentence be stayed by any competent judicial proceeding, notice of the reprieve or writ of error or stay of execution shall be served upon the Director of the Division of Correction, as well as upon the condemned felon, and he or she shall yield obedience to it.

(2) In any subsequent proceeding, the mandate of the court having regard to the condemned felon shall be served upon the Director of the Division of Correction as well as upon the felon.

(3) If the felon is resentenced by the court, the proceedings shall be as provided under the original sentence.

(b) If a new trial is granted to the condemned felon after he or she has been conveyed to the Division of Correction, he or she shall be conveyed back to the place of trial as the Director of the Division of Correction may direct.

(c) The only officers who shall have the power of suspending the execution of a judgment of death are:

(1) The Governor;

(2) In cases of insanity or pregnancy of the individual, the Director of the Division of Correction as provided in subsection (d) of this section; and

(3) In cases of appeals, the Clerk of the Supreme Court, as prescribed by law.

(d)(1)(A)(i)*(a)* When an individual under sentence of death, whose execution date has been set by the Governor, believes that he or she is not competent to be executed, the individual or his or her attorney may inform the Director of the Division of Correction in writing and

shall provide any supporting evidence he or she wishes to be considered.

(b) The Director of the Division of Correction shall consider any evidence offered by the individual or his or her attorney in making a determination of competency under subdivision (d)(1)(A)(ii) of this section.

(ii) When the Director of the Division of Correction is satisfied that there are reasonable grounds for believing that an individual under sentence of death is not competent, due to mental illness, to rationally understand the nature and reasons for that punishment, the Director of the Division of Correction shall notify the Deputy Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(iii) The Director of the Division of Correction shall also notify the Governor of this action.

(iv) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall cause an inquiry to be made into the mental condition of the individual within thirty (30) days of receipt of notification.

(v) The attorney of record of the individual shall also be notified of this action, and reasonable allowance will be made for an independent mental health evaluation to be made.

(vi) A copy of the report of the evaluation by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall be furnished to the Mental Health Services Section of the Division of Health Treatment Services of the Division of Correction, along with any recommendations for treatment of the individual.

(vii) All responsibility for implementation of treatment remains with the Mental Health Services Section of the Division of Health Treatment Services of the Division of Correction.

(B)(i) If, after an evidentiary hearing that comports with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, over which the Director of the Division of Correction shall preside, the individual is found competent by the Director of the Division of Correction to rationally understand the nature of and reason for the punishment, the Governor shall be so notified and shall order the execution to be carried out according to law.

(ii) If the individual is found incompetent due to mental illness, the Governor shall order that appropriate mental health treatment be provided. The Director of the Division of Correction may order a reevaluation of the competency of the individual as circumstances may warrant.

(2) When the Director of the Division of Correction is satisfied that there are reasonable grounds for believing that a female convict under sentence of death is pregnant, he or she shall suspend the execution until it appears that she is not pregnant or until she has delivered the child.

History. Crim. Code, §§ 290, 291; Acts 1913, No. 55, §§ 6, 7; C. & M. Dig., §§ 3250, 3251, 3258, 3259; Pope's Dig., §§ 4095, 4096, 4103, 4104; Acts 1959, No. 228, §§ 1, 2; A.S.A. 1947, §§ 43-2617, 43-2618, 43-2621, 43-2622; Acts 1993, No. 914, § 1; 2017, No. 913, § 42; 2019, No. 615, § 1.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" throughout (d)(1)(A); and redesignated (d)(1)(A) as (d)(1)(A)(i) through (d)(1)(A)(vi).

The 2019 amendment added (d)(1)(A)(i) and redesignated the remaining subdivisions accordingly; inserted "rationally" in (d)(1)(A)(ii); and, in (d)(1)(B)(i), inserted "after an evidentiary hearing that comports with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, over which the Director of the Division of Correction shall preside", inserted "by the Director of the Division of Correction", and inserted "rationally".

CASE NOTES

Constitutionality.

Circuit court erred in dismissing the inmate's complaint because subdivision (d)(1) of this section was unconstitutional on its face and violated the due-process guarantees of the United States and Arkansas Constitutions. Ward v. Hutchinson, 2018 Ark. 313, 558 S.W.3d 856 (2018) (decision under prior law).

Subdivision (d)(1) of this section is devoid of any procedure by which a death-row inmate has an opportunity to make an initial substantial threshold showing of insanity to trigger the hearing process; nor does the language of subdivision (d)(1) provide for an evidentiary hearing that comports with the fundamental principles of due process. Ward v. Hutchinson, 2018 Ark. 313, 558 S.W.3d 856 (2018) (decision under prior law).

Subdivision (d)(1) of this section is unconstitutional on its face and violates the due-process guarantees of the United States and Arkansas Constitutions; the Supreme Court overrules Singleton v. Endell, 316 Ark. 133, 870 S.W.2d 742 (1994), to the extent that it conflicts with this holding. Ward v. Hutchinson, 2018 Ark. 313, 558 S.W.3d 856 (2018) (decision under prior law).

Inmate had standing to bring an action challenging the constitutionality of subdivision (d)(1) of this section because he had a death sentence and thus a personal stake in the outcome of the case. Ward v. Hutchinson, 2018 Ark. 313, 558 S.W.3d 856 (2018) (decision under prior law).

Circuit court erred in dismissing defendant's complaint against the Director of the Department of Correction because subdivision (d)(1) of this section, which vested sole discretion in the director to determine whether a prisoner was competent to be executed, was unconstitutional on its face and violated the due-process guarantees of the United States and Arkansas Constitutions, for the reasons set forth in Ward v. Hutchinson, 2018 Ark. 313. Greene v. Kelley, 2018 Ark. 316 (2018) (decision under prior law).

Subchapter 7 — Arkansas Crime Victims Reparations Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-706. Powers of board — Logistical support.

(a)(1) The Crime Victims Reparations Board shall have:

(A) Power to award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met; and

(B) Authority to award the reparations to the claimant or directly to the provider of services.

(2) The board shall:

(A) Hear and determine all matters relating to claims for reparations, including having the power to reinvestigate or reopen claims without regard to statutes of limitation; and

(B)(i) Have discretion to act in a panel of three (3) or more members.

(ii) This panel may exercise the powers granted to the board.

(3) The board shall have the power to subpoena witnesses and compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings, and receive relevant evidence.

(4)(A) The board shall be provided such office, support staff, and secretarial services as necessary by the Department of Public Safety.

(B) The support staff and secretarial services described in subdivision (a)(4)(A) of this section may also be assigned by the Secretary of the Department of Public Safety to engage in additional work in other areas that do not involve crime victims reparations.

(b) In addition to any other powers and duties specified elsewhere in this subchapter, the board may:

(1) Regulate its own procedure, except as otherwise provided in this subchapter;

(2) Adopt rules to implement the provisions of this subchapter;

(3) Define any term not defined in this subchapter;

(4) Prescribe forms necessary to carry out the purposes of this subchapter;

(5) Request access to any reports of investigations or other data necessary to assist the board in making a determination of eligibility for reparations under the provisions of this subchapter;

(6) Take judicial notice of general, technical, and scientific facts within its specialized knowledge; and

(7) Publicize the availability of reparations and information regarding the filing of claims for reparations.

History. Acts 1987, No. 817, §§ 5, 6; 2011, No. 11, § 1; 2019, No. 315, § 1303; 2019, No. 910, § 5926.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(2).

The 2019 amendment by No. 910 substituted "Department of Public Safety" for "office of the Attorney General" in (a)(4)(A); and, in (a)(4)(B), substituted "Secretary of the Department of Public Safety" for "Attorney General", and deleted "legal" preceding "work".

16-90-707. Annual report by board.

(a) The Crime Victims Reparations Board shall prepare and transmit annually a report of its activities to the Secretary of the Department of Public Safety.

(b) This report shall include the amount of reparations awarded and a statistical summary of claims and awards made and denied.

History. Acts 1987, No. 817, § 18; 2019, No. 910, § 5927.

Amendments. The 2019 amendment substituted "Secretary of the Department of Public Safety" for "Governor" in (a).

16-90-715. Action by state against convicted person for recovery of reparations.

(a)(1) Whenever any person is convicted of a crime and an order for the payment of reparations is or has been made under this subchapter for a personal injury or death resulting from the act or omission constituting the crime for which conviction was had, the Secretary of the Department of Public Safety may institute a civil action against the convicted person for the recovery of all or any part of the reparations paid.

(2)(A) The suit shall be instituted in the circuit court having jurisdiction in the county in which the person resides or is found or in Pulaski County.

(B) The circuit court shall have jurisdiction to hear, determine, and render judgment in the action.

(3)(A) Any amount recovered under this subsection shall be credited to the Crime Victims Reparations Revolving Fund.

(B) If an amount greater than that paid pursuant to the order for payment of reparations is recovered and collected in the action, the Crime Victims Reparations Board shall pay the balance to the claimant.

(b) The board shall provide the secretary with such information, data, and reports as he or she may require to institute actions in accordance with this section.

(c) The secretary may request the assistance of the Attorney General in instituting a civil action against the convicted person for the recovery of all or any part of the reparations paid.

History. Acts 1987, No. 817, § 15; 2019, No. 910, § 5928.

Amendments. The 2019 amendment substituted "Secretary of the Department of Public Safety" for "Attorney General" in (a)(1); substituted "secretary" for "Attorney General" in (b); and added (c).

16-90-719. Property damage — Reparations — Intent.

(a)(1) Persons who have suffered damage to their primary residence and surrounding real property in an amount in excess of five hundred dollars ($500) as a result of a criminal act or who have had personal property stolen from their primary residence valued in excess of five hundred dollars ($500), and who do not have adequate available resources or any collateral source of reimbursement, such as insurance, to cover the costs of repairs to their property may file a claim with the Crime Victims Reparations Board in the manner and form as is presently required by the Crime Victims Reparations Board for crime victims.

(2) The Crime Victims Reparations Board shall have the power to provide labor for repairs and cleanup supplied by eligible offenders serving community correction and probationers in accordance with rules promulgated by the Board of Corrections.

(3) By this section, the Division of Community Correction is authorized and directed to promulgate necessary rules permitting the use of eligible inmates transferred to or sentenced directly to community correction and probationers to perform the repair and cleanup work contemplated by this section and consistent with guidelines established by the Crime Victims Reparations Board.

(b) Inmates who have been convicted of violent crimes or residential burglary, even if transferred to or sentenced directly to community correction, and probationers who have been convicted of violent crimes, residential burglary, or theft of property shall be ineligible to participate in this program, and the rules governing this program shall reflect this prohibition.

(c)(1) The Crime Victims Reparations Board and the Board of Corrections with the cooperation and assistance of the Division of Community Correction, working in conjunction with each other, shall promulgate the necessary rules to establish a program whereby eligible inmates released to or sentenced directly to community correction and probationers may perform labor on the primary residence and surrounding real property of victims whose primary residence has suffered damage as a result of a criminal act or whose personal property has been stolen from their primary residence, and whose owner does not have adequate available resources or any collateral source of reimbursement such as insurance to cover the costs of repairs or replacement.

(2) The safety of the victim, the probationer, and the inmate is to be given first priority in promulgating the rules.

(d)(1) Whenever a dollar amount of property damage or loss is referred to in subsections (a)-(c) of this section, the dollar amount shall refer to the fair market repair or replacement value.

(2) Further, no award shall be made under the provisions of this section for a loss based on the dollar amount of an insurance deductible which is five hundred dollars ($500) or less.

(e) It is the intent of this section to provide a method of reparations whereby victims whose primary residence is damaged or whose personal property is stolen from their primary residence as a result of criminal acts and who do not have adequate available resources or a collateral source of reimbursement such as insurance to cover the cost of repairs to their primary residence or replacement of the personal property may receive assistance in the form of inmate or probationer labor to make repairs to and clean up their primary residence and the surrounding real property.

History. Acts 1995, No. 1269, §§ 1-3; 2019, No. 315, §§ 1304, 1305.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(2), (a)(3), (c)(1), and (c)(2); and substituted "rules" for "regulations" in (b).

16-90-720. Payment for heathcare service — Schedule established — Third-party vendor authorized.

(a) The Crime Victims Reparations Board shall award payment for a healthcare service under this subchapter in the same manner as the medical fee schedule established for workers' compensation claims under § 11-9-517.

(b)(1) The board, a claimant, or a victim is not liable for healthcare service charges in excess of the medical fee schedule under subsection (a) of this section.

(2) A healthcare provider shall accept payment from the board as payment in full for healthcare service charges unless an investigation of the healthcare service charges by the board determines that there is a reasonable healthcare justification for a deviation from the medical fee schedule.

(c) The board may contract with a third-party vendor to process payment for healthcare services under this subchapter.

History. Acts 2017, No. 918, § 1.

Subchapter 8 — Sentencing Guidelines

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-801. Statement of sentencing policy.

(a) Purposes of Sentencing. The primary purposes of sentencing a person convicted of a crime are:

(1) To punish an offender commensurate with the nature and extent of the harm caused by the offense, taking into account factors that may diminish or increase an offender's culpability;

(2) To protect the public by restraining offenders;

(3) To provide restitution or restoration to victims of crime to the extent possible and appropriate;

(4) To assist the offender toward rehabilitation and restoration to the community as a lawful citizen; and

(5) To deter criminal behavior and foster respect for the law.

(b) Purpose of Sentencing Standards. (1) Though voluntary, the purpose of establishing rational and consistent sentencing standards is to seek to ensure that sanctions imposed following conviction are proportional to the seriousness of the offense of conviction and the extent of the offender's criminal history.

(2) The standards seek to ensure equitable sanctions which provide that offenders similar with respect to relevant sentencing criteria will receive similar sanctions and offenders substantially different with respect to relevant sentencing criteria will receive different sanctions.

(3) Sentencing criteria should be neutral with respect to race, gender, social, and economic status.

(c) Appropriate Use of Sentencing Sanctions. (1) Rational and consistent sentencing policy requires a continuum of sanctions which increases in direct proportion to the seriousness of the offense and the extent of the offender's criminal history.

(2) Commitment to the Division of Correction is the most severe sanction and due to the finite capacity of the division's facilities, it should be reserved for those convicted of the most serious offenses, those who have longer criminal histories, and those who have repeatedly failed to comply with conditions imposed under less restrictive sanctions.

(3) Arkansas law provides for significant intermediate penal sanctions in the community which should be utilized when appropriate.

(4) Restrictions on an offender's liberty should only be as restrictive as necessary to fulfill the purposes of sentencing contained in this policy.

History. Acts 1993, No. 532, § 1; 1993, No. 550, § 1; 2019, No. 910, § 876.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "division's facilities" for "department's facilities" in (c)(2).

RESEARCH REFERENCES

Ark. L. Rev. Alexis Stevens, Same Grid, Different Results: Criminal Sentencing Disparities Between Arkansas Counties, 73 Ark. L. Rev. 183 (2020).

16-90-802. The Arkansas Sentencing Commission.

(a) There is hereby created the Arkansas Sentencing Commission, the purpose of which is to evaluate the effect of sentencing laws, policies, and practices on the criminal justice system, to make appropriate and necessary revision to the sentencing standards, and to make recommendations to the General Assembly on proposed changes of sentencing laws, policies, and practices.

(b)(1) The commission shall be composed of nine (9) voting members and two (2) advisory members.

(2)(A) One (1) advisory member shall be appointed by and serve at the pleasure of the Chair of the Senate Committee on Judiciary.

(B) One (1) advisory member shall be appointed by and serve at the pleasure of the Chair of the House Committee on Judiciary.

(3) The voting members of the commission shall be composed of:

(A) Three (3) circuit judges;

(B) Two (2) prosecuting attorneys;

(C) Two (2) public defenders or private attorneys whose practices consist primarily of criminal defense work; and

(D) Two (2) private citizen members.

(c)(1)(A) The Governor shall appoint the voting members of the commission.

(B) All voting members shall serve for a term of five (5) years, unless they resign or are removed. Members shall serve until their replacements are appointed. Vacancies occurring before the expiration of a term shall be filled in the manner provided for members first appointed.

(2) The Governor shall select a chair to serve at his or her will.

(3) Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d) In furtherance of its purpose, the commission shall have the following powers and duties:

(1)(A) The commission shall adopt an initial sentencing standards grid and an offense seriousness reference table based upon the

statutory parameters and additional data and information gathered prior to January 1, 1994.

(B) The commission shall also set the percentage of time within parameters set by law to be served for offenses at each seriousness level prior to any type of transfer or release;

(2)(A) The commission shall periodically review and may revise the voluntary sentencing standards.

(B) Any revision of the standards shall be in compliance with provisions applicable to rule making contained in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(C) Any revision of the standards shall become effective as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(D)(i) The revised standards will be in effect unless modified by the General Assembly at its next session or until revised again by the commission.

(ii) Any revisions by the commission shall be within the statutory parameters set for the various crime classes;

(3) The commission may review and make recommendations for revision of the § 16-93-1201 et seq. target group to the General Assembly such that nonviolent offenses and offenders are routinely handled in community correction programs;

(4)(A) The commission shall be in charge of strategic planning for a balanced correctional plan for the state.

(B) The commission shall develop such a plan in conjunction with the Board of Corrections.

(C) The commission shall monitor compliance with sentencing standards, assess their impact on the correctional resources of the state with the assistance of the board, and determine if the standards further the adopted sentencing policy goals of the state;

(5) The commission may review the classifications of crimes and sentences and make recommendations for change when supported by information that change is advisable to further the adopted sentencing policy goals of the state;

(6)(A) The commission shall develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length.

(B) The commission shall prepare and submit to the General Assembly a report on any such legislation prior to its adoption;

(7)(A)(i) All courts having criminal jurisdiction of felony crimes shall provide to the commission in a timely manner all information deemed necessary by the commission.

(ii) Such information shall be in the form determined necessary by the commission.

(B) The commission shall have the authority to collect from any state or local governmental entity information, data in electronic or in other usable form, reports, statistics, or such other material which

relates to sentencing laws, policies, and practices, or impacts on correctional resources or is necessary to carry out the commission's functions.

(C) The commission may coordinate its data collection with the Administrative Office of the Courts, the Arkansas Crime Information Center, the various circuit clerks of the state, and the various state and local correctional agencies;

(8) Under its duties outlined in this section, the commission shall be a criminal justice agency, as defined in § 12-12-1001, as its powers and duties include:

(A) Determining transfer eligibility;

(B) Gathering, analyzing, and disseminating criminal history information as it relates to sentencing practices, dispositions, and release criteria; and

(C) Determining the appropriate use of correctional and rehabilitative resources of the state;

(9)(A) Produce annual reports regarding compliance with sentencing guidelines, including the application of voluntary presumptive standards, § 16-90-803, and departures from the standards, § 16-90-804.

(B) The report shall include:

(i) Data collected from each county; and

(ii) Both a county-by-county and statewide accounting of the results including without limitation:

(a) Sentences to the Division of Correction and Division of Community Correction;

(b) The average sentence length for sentences by offense type and severity level according to the sentencing guidelines;

(c) The percentage of sentences that are an upward departure from the sentencing guidelines; and

(d) The average number of months above the recommended sentence for those sentences described in subdivision (d)(9)(B)(ii)*(c)* of this section.

(C) The report filed each year after the initial report submitted under this section shall include data from prior years;

(10) Prepare and conduct annual continuing legal education seminars regarding the sentencing guidelines to be presented to judges, prosecuting attorneys and their deputies, and public defenders and their deputies, as so required; and

(11)(A) The commission shall collaborate with the Administrative Office of the Courts to develop and implement an integrated sentencing commitment and departure form that shall include:

(i) Demographic information including the race and ethnicity of both the offender and the victim or victims;

(ii) The placement decision;

(iii) Sentence length;

(iv) Any departure from the sentencing guidelines on placement and sentence length;

(v) The number of months above or below the presumptive sentence;

(vi) Justification for the departure; and

(vii) A signature space for the judge and the prosecuting attorney to sign off on the contents of the form.

(B) The commission shall begin using the new form on January 1, 2012.

(C)(i) Forms are to be collected annually and sent to the Administrative Office of the Courts.

(ii) Data from the forms shall be collected and submitted to the Chair of the House Committee on Judiciary and the Chair of the Senate Committee on Judiciary.

(e)(1) The commission shall meet no less than quarterly.

(2)(A) The commission shall submit to the Governor, the General Assembly, and the Arkansas Judicial Council, Inc. a biennial report three (3) months prior to the convening of the regular session.

(B) The report shall include a summary of the commission proceedings and recommendations for legislative and administrative action.

(f)(1) The commission shall employ a director from candidates presented to it by the Chair of the Arkansas Sentencing Commission in consultation with the Secretary of the Department of Corrections.

(2) The Director of the Arkansas Sentencing Commission shall have appropriate training and experience to assist the commission in the performance of its duties.

(3) The director shall be responsible for compiling the work of the commission and drafting suggested legislation incorporating the commission's findings for submission to the General Assembly.

(g)(1) The secretary shall employ such other staff and shall contract for services as are necessary to assist the commission in the performance of its duties, and as funds permit.

(2) The secretary shall ensure that appropriate budgetary measures are taken to employ enough staff or contract for expert services and to purchase the technology needed to compile and process sentencing data from all judicial districts in a timely manner.

History. Acts 1993, No. 532, § 4; 1993, No. 550, § 4; 1995, No. 1170, § 6; 1997, No. 250, § 119; 2001, No. 1288, § 14; 2009, No. 962, § 36; 2011, No. 570, §§ 78, 79; 2019, No. 910, §§ 865, 866.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (d)(9)(B)(ii)*(a)*; in (f)(1), substituted "a director" for "an executive director", and added "in consultation with the Secretary of the Department of Corrections"; substituted "Director of the Arkansas Sentencing Commission" for "Executive Director of the Arkansas Sentencing Commission" in (f)(2); substituted "director" for "executive director" in (f)(3); substituted "The secretary" for "Subject to the approval of the Chair of the Arkansas Sentencing Commission, the executive director" in (g)(1); and substituted "secretary" for "executive director" in (g)(2).

16-90-803. Voluntary presumptive standards.

(a)(1)(A) When a person charged with a felony enters a plea of guilty or nolo contendere, enters a negotiated plea, or is found guilty in a

trial before the judge, or when the trial judge is authorized to fix punishment following an adjudication of guilt by a jury pursuant to § 5-4-103, sentencing may follow the procedures provided in § 16-90-804.

(B) However, these sentencing procedures do not apply to probation revocation proceedings.

(2) The voluntary presumptive sentence for any offender who committed a felony on or after January 1, 1994, may be determined by locating the appropriate cell of the sentencing standards grid.

(b) The two (2) dimensions of the sentencing standards grid represent the primary determinants of a sentence, offense seriousness and offender history.

(1) Offense Seriousness. The offense seriousness level is determined by the offense of conviction or the offense of which the person was found guilty or to which the person pleaded guilty or nolo contendere.

(A) Felony offenses are divided into ten (10) levels of seriousness, ranging from low, seriousness level I, to high, seriousness level X.

(B) The typical cases for the offenses listed within each level of seriousness are deemed to be generally equivalent in seriousness.

(C) The most frequently occurring offenses within each seriousness level are listed on the vertical axis of the sentencing standards grid.

(D) The seriousness level for infrequently occurring offenses can be determined by consulting the offense seriousness reference table.

(E) The seriousness level for inchoate offenses is one (1) level below the level for substantive offenses.

(2) Offender History. An offender's criminal history score constitutes the horizontal axis of the sentencing standards grid.

(A) The offender's criminal history score shall be computed from the following:

(i) Prior felony records;

(ii) Prior misdemeanor records;

(iii) Prior juvenile records, under certain circumstances set out in subdivision (b)(2)(C) of this section; and

(iv) Custody status at the time of the offense.

(B) The term "records", for the purpose of computing criminal history scores, shall include all of the following that are entered up to the date of sentencing for the offense:

(i) Convictions;

(ii) Findings of guilt;

(iii) Acceptance of pleas of guilty or nolo contendere;

(iv) Instances in which the defendant has been placed on probation, suspended imposition of sentence, or suspended execution of sentence;

(v) Records that have been expunged after August 31, 1994; and

(vi) Dismissals ordered after August 31, 1994, pursuant to § 16-93-301 et seq.

(C) The specific weights to be assigned to the various criteria are as follows:

(i) Weight is assigned to prior felony records according to seriousness level, as follows:

(a) Seriousness levels I, II, III, IV, and V = one-half (0.5) point; and

(b) Seriousness levels VI, VII, VIII, IX, and X = one (1) point;

(ii) Weight is assigned only to Class A misdemeanors.

(a) Each Class A misdemeanor is worth one-quarter (0.25) point.

(b) No more than one (1) point may be accrued from misdemeanor records;

(iii) Weight is assigned only to judicial adjudications of delinquency for offenses for which a juvenile could have been tried as an adult and which the trial court deem relevant to sentencing in the current proceeding.

(a) Each adjudication is worth one-quarter (0.25) point, except for offenses adjudicated as delinquent which if committed by an adult are worth one (1) point and would have constituted:

(1) Capital murder, § 5-10-101;

(2) Murder in the first degree, § 5-10-102;

(3) Murder in the second degree, § 5-10-103;

(4) Kidnapping in the first degree, § 5-11-102;

(5) Aggravated robbery, § 5-12-103;

(6) Rape, § 5-14-103;

(7) Battery in the first degree, § 5-13-201; or

(8) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

(b)(1) No more than one (1) point may be accrued from juvenile offenses unless one (1) of the offenses adjudicated as delinquent would have constituted, if committed by an adult:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Murder in the second degree, § 5-10-103;

(D) Kidnapping in the first degree, § 5-11-102;

(E) Aggravated robbery, § 5-12-103;

(F) Rape, § 5-14-103;

(G) Battery in the first degree, § 5-13-201; or

(H) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

(2) An offender may receive no more than two (2) points for juvenile offenses;

(iv) One (1) point is to be added to an offender's score if the offender is under any type of criminal justice restraint for a felony offense at the time that he or she committed the crime for which he or she is being sentenced. Such restraint includes pretrial bond, suspended imposition of sentence, probation, parole, postprison supervision, and release pending sentencing for a prior crime;

(v)*(a)* Juvenile offenses must have occurred within ten (10) years of the time of the offense for which an offender is being currently sentenced.

(b) Misdemeanor offenses must have occurred within ten (10) years of the time of the offense for which an offender is currently being sentenced.

(c) Felony offenses at seriousness levels I-V will not be counted if a period of fifteen (15) years has elapsed since the date of discharge from or expiration of the sentence to the date of the current offense; and

(vi) When multiple sentences for a single course of conduct were imposed, only the offense at the highest seriousness level is considered.

(3)(A)(i) The offense of conviction determines the appropriate seriousness level on the vertical axis.

(ii) The offender's criminal history score determines the appropriate location on the horizontal axis.

(B) The voluntary presumptive fixed sentence for a felony conviction is found in the sentencing standards grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense seriousness level.

(C) The statutory minimum or maximum ranges for a particular offense shall govern over a voluntary presumptive sentence if the voluntary presumptive sentence should fall below or above the statutory minimum or maximum ranges.

(4) This section shall not apply when a jury has recommended a sentence to the trial judge.

(5) Capital murder is excluded from the sentencing standards and is subject to the procedures in § 5-4-601 et seq.

(c) For all arrests or offenses occurring before July 1, 2005, that have not reached a final disposition as to judgment in the trial court, sentencing shall be in accordance with the law in effect at the time the offense occurred and not under the provisions of this section.

History. Acts 1993, No. 532, § 2; 1993, No. 550, § 2; 1994 (2nd Ex. Sess.), No. 59, § 1; 1994 (2nd Ex. Sess.), No. 60, § 1; 1995, No. 1170, § 7; 2001, No. 1179, § 1; 2005, No. 186, § 1; 2017, No. 367, §§ 12, 13; 2017, No. 423, §§ 13, 14; 2021, No. 426, § 1.

Amendments. The 2017 amendment by No. 367 added (b)(2)(C)(iii)*(a)(8)* and (b)(2)(C)(iii)*(b)(1)(H)*.

The 2017 amendment by No. 423 inserted "voluntary" in (a)(2) and throughout (b)(3); substituted "who committed a felony" for "of a felony committed" in (a)(2); and, in (b)(3)(C), substituted "offense" for "crime" and "the statutory minimum or maximum" for "such".

The 2021 amendment substituted "set out in subdivision (b)(2)(C) of this section" for "outlined below" in (b)(2)(A)(iii); added "all of the following that are entered up to the date of sentencing for the offense" in the introductory language of (b)(2)(B); and made stylistic changes.

RESEARCH REFERENCES

Ark. L. Rev. Alexis Stevens, Same Grid, Different Results: Criminal Sentencing Disparities Between Arkansas Counties, 73 Ark. L. Rev. 183 (2020).

CASE NOTES

Offender History.

Because defendant's prior felony records were more than 15 years old, and his prior misdemeanor record was more than 10 years old, they did not count toward his criminal history under the presumptive standards, and his criminal-history score was 0, rather than 2. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

16-90-804. Departures from the voluntary presumptive sentence range.

(a)(1) At a bench trial, a court may depart from the voluntary presumptive sentence range determined under § 16-90-803 in reliance on one (1) or more aggravating factors by providing a justification in the record of:

(A) A listing of the charges and sentencing enhancements against the offender as set out in the first charging instrument as well as any additional charges or sentence enhancements subsequently added in the case, if any; and

(B) A thorough recitation of the facts underlying the departure from the voluntary presumptive sentence range under § 16-90-803.

(2)(A) The justification regarding an aggravating factor shall be entered into the sentencing order.

(B) The sentencing order shall also reflect whether the sentence is the result of an original charge or whether an original charge was nolle prosequi.

(b)(1)(A) When sentencing is done by the court following a trial before the court, either party or both parties may present evidence to justify a departure from the voluntary presumptive sentence range determined under § 16-90-803.

(B) The court may allow argument either during the sentencing phase of a trial or at a separate hearing on the matter of departing from the voluntary presumptive sentence range determined under § 16-90-803 if the court finds that argument would be helpful.

(C)(i) When sentencing is done by the court following the entry of a plea of guilty, nolo contendere, or a negotiated plea of guilty, the court shall enter the sentence on the record.

(ii) After the court enters the sentence on the record under subdivision (b)(1)(C)(i) of this section, the prosecuting attorney shall provide in writing the credible reasons for a departure from the voluntary presumptive sentence range, if a departure from the voluntary presumptive sentence range is applicable.

(2)(A) If both parties agree on a recommended sentence, the court may choose to accept or reject the agreement based upon the facts of the case and whether the facts support the voluntary presumptive sentence range determined under § 16-90-803 or a departure different from any recommendation.

(B)(i) If there is an agreed departure from the voluntary presumptive sentence range under § 16-90-803, the parties shall supply

written reasons to the court to attach to the sentencing order and to report to the Arkansas Sentencing Commission.

(ii) The written reasons required under subdivision (b)(2)(B)(i) of this section shall include:

(a) A listing of the charges and sentencing enhancements against the offender as they were set out in the first charging instrument as well as any additional charges or sentence enhancements subsequently added in the case, if any; and

(b) A thorough recitation of the facts underlying the departure from the presumptive sentence range under § 16-90-803.

(C) If the court rejects the agreement under subdivision (b)(2)(A) of this section, the offender shall be allowed to withdraw his or her plea.

(c) The following is a nonexclusive list of mitigating factors that may be considered as a reason or reasons for departure from the voluntary presumptive sentence range under § 16-90-803:

(1) While falling short of a defense, the victim played an aggressive role in the incident or provoked or willingly participated in the incident;

(2) The offender played a minor or passive role in the commission of the current offense;

(3) Before detection, the offender compensated or made a good faith effort to compensate the victim for any damage or injury sustained by the victim;

(4) The current offense was principally accomplished by another person, and the offender manifested extreme caution or sincere concern for the safety or well-being of the victim;

(5) The offender or the offender's children suffered a continuing pattern of physical or sexual abuse by the victim of the current offense, and the current offense is a response to the physical or sexual abuse;

(6) The inclusion of multiple offenses in calculating the voluntary presumptive sentence range under § 16-90-803 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter;

(7) If the current offense is a sexual offense, before detection in the sexual offense, the offender has voluntarily admitted the nature and extent of the sexual offense and has sought and participated in professional treatment or counseling for the sexual offense;

(8) Upon motion of the state stating that the offender has made a good faith effort to provide substantial assistance to the investigation or prosecution of another person who has committed an offense, the circumstances listed below may be weighed as mitigating factors with respect to the offender's offense:

(A) The timeliness of the offender's assistance;

(B) The nature and extent of the offender's assistance; and

(C) The truthfulness, completeness, and demonstrable reliability of any information or testimony provided by the offender; and

(9)(A) Any other compelling reason.

(B) If any other compelling reason is used as a mitigating factor under this subsection, additional details regarding the negotiated

plea, if applicable, and why the sentence was a downward departure from the voluntary presumptive sentence shall be included.

(d) The following is a nonexclusive list of aggravating factors that may be considered as a reason or reasons for departure from the voluntary presumptive sentence range determined under § 16-90-803:

(1) The offender's conduct during the commission of the current offense manifested deliberate cruelty to the victim exhibited by degrading, gratuitous, vicious, torturous, and demeaning physical or verbal abuse, unusual pain, or violence in excess of that necessary to accomplish the criminal purpose;

(2) The offender knew or should have known that the victim was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health;

(3) The current offense was a major economic offense or series of offenses, as identified by a consideration of any of the following factors:

(A) The current offense involved multiple victims or multiple incidents per victim;

(B) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(C) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(D)(i) The offender used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(ii) The factor described under subdivision (d)(3)(D)(i) of this section does not apply if it constitutes an element of the current offense; or

(E) The offender has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions;

(4)(A) The current offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual controlled substance offense.

(B) The presence of two (2) or more of the following circumstances is an aggravating factor with respect to the current offense:

(i) The current offense involved at least three (3) separate transactions in which controlled substances were sold, transferred, or possessed with a purpose to sell or transfer the controlled substance;

(ii) The current offense involved an attempted or actual sale or transfer of a controlled substance in an amount substantially larger than the statutory minimum that defines the current offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The offender used his or her position or status to facilitate the commission of the current offense, including without limitation

positions of trust, confidence, or fiduciary relationships, such as a pharmacist, physician, or other medical professional; or

(vi) The offender has received substantial income or resources from his or her involvement in trafficking a controlled substance;

(5)(A) The current offense is a felony and the offender employed a firearm in the course of or in furtherance of the felony or in immediate flight from the felony.

(B) The factor described under subdivision (d)(5)(A) of this section does not apply to an offender convicted of a felony, an element of which is:

(i) Employing or using, or threatening or attempting to employ or use, a deadly weapon;

(ii) Being armed with a deadly weapon;

(iii) Possessing a deadly weapon;

(iv) Furnishing a deadly weapon; or

(v) Carrying a deadly weapon;

(6) The current offense was a sexual offense and was part of a pattern of criminal behavior with the same or different victims under eighteen (18) years of age manifested by multiple incidents over a prolonged period of time;

(7) The inclusion of multiple offenses in calculating the voluntary presumptive sentence range under § 16-90-803 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter;

(8) The current offense was committed in a manner that exposed risk of injury to persons other than the victim or victims, including without limitation shooting a firearm into a crowd of people;

(9) The current offense was a violent or sexual offense committed in the victim's zone of privacy, including without limitation the victim's home or the curtilage of the victim's home;

(10) The offender attempted to cover or conceal the current offense by intimidation of witnesses, destruction or tampering with evidence, or purposely misleading authorities;

(11) The current offense was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody;

(12) If the current offense is related to a vehicular homicide, the offender did not have the minimum insurance required by law; and

(13)(A) Any other compelling reason.

(B) If any other compelling reason is used as an aggravating factor under this subsection, additional details regarding the negotiated plea, if applicable, and why the sentence was an upward departure from the voluntary presumptive sentence shall be included.

(e) This section shall not apply when a jury has recommended a sentence to the trial court.

History. Acts 1993, No. 532, § 3; 1993, No. 550, § 3; 1995, No. 1170, §§ 8, 9; 2005, No. 186, § 1; 2017, No. 423, § 15.

Amendments. The 2017 amendment substituted "voluntary presumptive sentencing range" for "standards" in the section heading; and rewrote the section.

Effective Dates. Acts 2017, No. 423,

§ 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

RESEARCH REFERENCES

Ark. L. Rev. Alexis Stevens, Same Grid, Different Results: Criminal Sentencing Disparities Between Arkansas Counties, 73 Ark. L. Rev. 183 (2020).

CASE NOTES

Upward Deviation Upheld.

Given the testimony against defendant, and because the presumptive sentencing standards are merely advisory, the circuit court did not abuse its discretion by departing from the presumptive sentence of 20 years' imprisonment and imposing 70 years' imprisonment on the continuing criminal enterprise conviction. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Subchapter 10 — Local Crime Stoppers Programs

16-90-1002. Duties.

(a) The Crime Victims Reparations Board shall:

(1) Advise and assist in the creation of local crime stoppers programs;

(2) Foster the detection of crime and encourage persons to report information about criminal acts;

(3) Encourage news and other media to promote local crime stoppers programs and to inform the public of the functions of the board;

(4) Assist local crime stoppers programs in forwarding information about criminal acts to the appropriate law enforcement agencies;

(5) Help law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies; and

(6) Adopt rules necessary to carry out its functions under this subchapter.

(b) The office of the Attorney General shall provide the board such office space, support staff, and secretarial services as may be necessary for the administration of this subchapter.

History. Acts 1995, No. 1300, § 2; 2019, No. 315, § 1306; 2021, No. 475, § 20.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(6).

The 2021 amendment deleted "necessary" following "Adopt" in (a)(6).

Subchapter 11 — Rights of Victims of Crime

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-1101. Definitions.

As used in this subchapter:

(1) "Crime" means an act or omission committed by a person, whether or not competent or an adult, which is punishable by incarceration if committed by a competent adult;

(2) "Member of the victim's family" means the spouse, a child by birth or adoption, a stepchild, a parent, a stepparent, a sibling, or an individual designated by the victim or by a court in which the crime is being or could be prosecuted, but does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan;

(3) "Offense against a victim who is a minor" means:

(A) Kidnapping pursuant to § 5-11-102(a)(4) when the victim is a minor and the offender is not the parent of the victim;

(B) False imprisonment in the first degree pursuant to § 5-11-103 when the victim is a minor and the offender is not the parent of the victim;

(C) Permanent detention or restraint pursuant to § 5-11-106 when the victim is a minor and the offender is not the parent of the victim;

(D) Any sex offense when the victim is a minor;

(E) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (3);

(F) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (3); or

(G) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (3);

(4) "Person" means an individual, corporation, estate, trust, partnership, association, joint venture, governmental entity, agency, or instrumentality, or any other legal entity;

(5) "Representative of the victim" means a member of the victim's family or an individual designated by the victim or by a court in which the crime is being or could be prosecuted;

(6) "Sex offense" means:

(A) Rape, § 5-14-103;

(B) Sexual indecency with a child, § 5-14-110;

(C) Sexual assault in the first degree, § 5-14-124;

(D) Sexual assault in the second degree, § 5-14-125;

(E) Sexual assault in the third degree, § 5-14-126;

(F) Sexual assault in the fourth degree, § 5-14-127;

(G) Incest, § 5-26-202;

(H) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(I) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(J) Employing or consenting to use of a child in sexual performance, § 5-27-402;

(K) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(L) Computer child pornography, § 5-27-603;

(M) Computer exploitation of a child in the first degree, § 5-27-605(a);

(N) Promoting prostitution in the first degree, § 5-70-104;

(O) Stalking, § 5-71-229;

(P) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (6);

(Q) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (6);

(R) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (6); or

(S) Sexual extortion, § 5-14-113;

(7) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;

(8) "Victim" means a victim of a sex offense or an offense against a victim who is a minor and a victim of any violent crime, but does not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan and does not include a governmental entity; and

(9) "Violent crime" means any felony which resulted in physical injury to the victim, any felony involving the use of a deadly weapon, terroristic threatening in the first degree, § 5-13-301(a), and stalking, as defined in § 5-71-229.

History. Acts 1997, No. 1262, § 1; 2003, No. 1087, § 13; 2003, No. 1390, § 8; 2017, No. 664, § 8.

Amendments. The 2017 amendment added (6)(S).

16-90-1109. Information concerning confinement or commitment.

(a)(1) Upon request of the victim, the Division of Correction, the Arkansas State Hospital, a local or regional hospital, local or regional mental health facility, or any other facility to which the defendant is committed by the court shall:

(A) Promptly inform the victim, through the use of the victim notification system under § 12-12-1201 et seq. or other method of personal communication, of the estimated date of the defendant's release from confinement from a court-ordered commitment under § 5-2-301 et seq., if reasonably ascertainable;

(B) Inform the victim at least thirty (30) days before release of the defendant on furlough or to a work release, halfway house, or other community program, if applicable;

(C) Inform the victim as soon as possible but preferably at least thirty (30) days before release of the defendant from a local or regional hospital or local or regional mental health facility, if applicable; and

(D) Promptly inform the victim of the occurrence of any of the following events concerning the defendant:

(i) An escape from a correctional or mental health facility or community program;

(ii) A recapture;

(iii) A decision of the Governor to commute the sentence or to pardon;

(iv) A release from confinement and any conditions attached to the release;

(v) A discharge or conditional release or modification of a previously ordered conditional release from a court-ordered commitment under § 5-2-315; or

(vi) The defendant's death.

(2) The requirement to inform a victim by a local or regional hospital or a local or regional mental health facility under this subsection may be accomplished by notifying by telephone or other electronic means the Arkansas State Hospital of the change of status of the defendant, and the Arkansas State Hospital shall then notify the victim through the victim notification system under § 12-12-1201 et seq. or other method of personal communication.

(b)(1) At least thirty (30) days before a Parole Board hearing concerning the defendant, if requested by the victim, the board shall inform the victim of the hearing and of the victim's right to submit to the board a victim impact statement and shall promptly inform the victim of any decision of the board.

(2)(A) It is the responsibility of the victim or his or her next of kin to notify the board of any change in address or telephone number.

(B) It is the responsibility of the victim or his or her next of kin to notify the board after the date of commitment of any change in regard to the desire to be notified of any future parole hearings.

History. Acts 1997, No. 1262, § 9; 2017, No. 429, § 3; 2019, No. 910, § 867.

Amendments. The 2017 amendment added "or commitment" in the section heading; and rewrote (a).

The 2019 amendment substituted "Division of Correction" for "Department of Correction" in the introductory language of (a)(1).

16-90-1112. Victim impact statement.

(a)(1) Before imposing sentence, the court shall permit the victim to present a victim impact statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, and the manner in which the crime was perpetrated.

(2) The victim may present the statement in writing before the sentencing proceeding or orally under oath at the sentencing proceeding.

(3) The defendant is required to physically remain in the courtroom during the presentation of any victim impact statement, unless the court determines that the defendant is behaving in a disruptive manner or in a manner that presents a threat to the safety of any person present in the courtroom.

(b) The court shall give copies of all written victim impact statements to the prosecuting attorney and the defendant.

(c) The sentencing court shall consider the victim impact statement along with other factors, but if the victim impact statement includes new material factual information upon which the court intends to rely, the court shall adjourn the sentencing proceeding or take other appropriate action to allow the defendant adequate opportunity to respond.

History. Acts 1997, No. 1262, § 12; 2019, No. 301, § 1.

Amendments. The 2019 amendment added (a)(3).

RESEARCH REFERENCES

ALR. Admissibility of Victim Impact Evidence in Noncapital State Proceedings. 8 A.L.R.7th Art. 6 (2016).

CASE NOTES

Resentencing.

Circuit court erred in resentencing defendant to life in prison after his original life-without-parole sentence for juvenile crimes was vacated due to Miller v. Alabama, 567 U.S. 460 (2012), because evidence of defendant's original sentence had no probative value and was inherently prejudicial under Ark. R. Evid. 403. The jury not only could have had a diminished sense of responsibility, but also might have improperly considered the procedural history of the case in determining the appropriate punishment, particularly given the testimony of the victim's family as to the adverse effect that the overturning of defendant's sentence and the resentencing trial had on them. Kitchell v. State, 2020 Ark. 102, 594 S.W.3d 848 (2020).

16-90-1116. Arkansas In-Life Photograph Act.

(a) This section shall be known and may be cited as the "Arkansas In-Life Photograph Act".

(b)(1) In a homicide case, the state has a right to have a photograph depicting the deceased person as he or she appeared in life before the crime occurred admitted and displayed at trial during the state's case-in-chief, if the photograph is submitted by the prosecution and is a reasonable, accurate, and appropriate depiction of the deceased person, subject to Rule 403 of the Arkansas Rules of Evidence and any other rule or law.

(2) The court may limit the size of the photograph, the length of time the photograph is displayed, and give a limiting instruction to the jury as to the weight the photograph should be afforded.

History. Acts 2021, No. 1096, § 2.

A.C.R.C. Notes. Acts 2021, No. 1096, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) In furtherance of the administration of justice in the State of Arkansas, there is a compelling governmental interest to allow a person who has been the victim of a crime the right to be present at all proceedings at which the defendant accused of committing the homicide has the right to be present;

"(2) A crime scene or autopsy photograph of a person who has been the victim of a homicide that is typically introduced to a judge and jury is not an acceptable substitution for the presence in the courtroom of the person who has been the victim of a homicide;

"(3) The introduction of an admissible crime scene or autopsy photograph does not effectively communicate to a judge or jury the personhood of the person who has been the victim of a homicide;

"(4) Due to the nature of homicide crimes, a trial involving a homicide offense stands apart from other trials in that the person who has been the victim of a homicide can neither be present nor seek justice himself or herself;

"(5) It is the policy of the State of Arkansas that the display of an in-life photograph of a person who has been the victim of a homicide is not by its nature inflammatory or likely to unduly provoke the sympathies of a judge or jury to a degree as to unfairly prejudice a person accused of committing the homicide or otherwise override the compelling public interest of allowing a person who has been the victim of a homicide to be appropriately represented at a homicide trial;

"(6) It is a legitimate and compelling policy interest of the State of Arkansas that the courts afford persons who have been victims of a homicide the same consideration as persons who have been the victims of other crimes; and

"(7) There is a compelling public interest in ensuring that persons who have been a victim of a homicide are granted a respectful presence in a courtroom, not merely a presence diminished in humanity as depicted in a crime scene or autopsy photograph that cannot capture the personhood of the person who once lived, but depicted as a real person, and this compelling public interest is narrowly tailored to achieve this public policy by allowing an appropriate and respectful in-life photograph of the person who has been the victim of a homicide to be displayed to a judge or jury during a trial for a homicide offense."

Subchapter 14 — Comprehensive Criminal Record Sealing Act of 2013

A.C.R.C. Notes. Acts 2019, No. 680, § 1, provided: "Legislative intent.

"(a) It is the intent of the General Assembly to find an easier pathway for a person to seal his or her record of certain criminal offenses for which sealing is already an option.

"(b) It is further the intent of the General Assembly to notify the public that this act is the first step in a multi-step process to attempt to make the sealing of certain records of a person's criminal history that involve nonviolent and nonsexual offenses an automatic operation.

"(c) A study of the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., will be undertaken in the interim to propose any recommended or necessary legislation for the 2021 Regular Session, as well as an overall study of the funding of the criminal justice system, where applicable."

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-90-1404. Definitions.

As used in this subchapter:

(1) "Completion of a person's sentence" means that the person, after being found guilty:

(A) Paid his or her fine, court costs, or other monetary obligation as defined in § 16-13-701 in full, unless the obligation has been excused by the sentencing court;

(B) Served any time in county or regional jail, a Division of Community Correction facility, or a Division of Correction facility in full; and

(C) If applicable:

(i) Has been discharged from probation or parole;

(ii) Completed any suspended sentence;

(iii) Paid any court-ordered restitution;

(iv) Completed any court-ordered community service;

(v) Paid any driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest, plea of guilty or nolo contendere, or a finding of guilt for the offense;

(vi) Completed all other driver's license reinstatement requirements, if a driver's license suspension was imposed as a result of the person's arrest, plea of guilty or nolo contendere, or a finding of guilt for the offense; and

(vii) Completed any vocational or technical education or training program that was required as a condition of the person's parole or probation;

(2) "Conviction":

(A) Includes the following, after the final act of judgment:

(i) A plea of guilty or nolo contendere, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, by a person formally charged with an offense;

(ii) A finding of guilt, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, by a judge or jury after a trial;

(iii) A finding of guilt, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, after entry of a plea of nolo contendere;

(iv) A sentence of supervised probation on a felony charge;

(v) A suspended imposition of sentence, as defined in § 16-93-1202, with a fine;

(vi) A sentence under § 16-93-1201 et seq.;

(vii) A suspended sentence that is revocable and can subject the person to incarceration or a fine, or both; or

(viii) A finding of guilt of a person whose case proceeded under § 16-93-301 et seq., and who violated the terms and conditions of § 16-93-301 et seq.; and

(B) Does not include:

(i) An order nolle prosequi;

(ii) A suspended imposition of sentence, as defined in § 16-93-1202, with no fine;

(iii) An acquittal for any reason;

(iv) An order that the defendant enter a diversionary program that requires him or her to accomplish certain court-ordered objectives but that does not result in a finding of guilt if the program is successfully completed;

(v) A court-ordered probationary period under:

(a) The former § 5-64-413; or

(b) Section 16-93-301 et seq.;

(vi) The entry of a plea of guilty or nolo contendere without the court's making a finding of guilt or entering a judgment of guilt with the consent of the defendant or the resultant dismissal and discharge of the defendant as prescribed by § 16-93-301 et seq.;

(vii) The entry of a directed verdict by a court at trial; or

(viii) The dismissal of a charge either with or without prejudice;

(3) "Court" means a sentencing district court or sentencing circuit court, unless otherwise specifically identified;

(4)(A) "Seal" means to expunge, remove, sequester, and treat as confidential the record or records in question according to the procedures established by this subchapter.

(B) "Seal" does not include the physical destruction of a record of a conviction unless this subchapter requires the physical destruction of the record of a conviction;

(5) "Sentence" means the outcome formally entered by a court upon a person in criminal proceedings;

(6) "Sex offense" means:

(A) The same as defined in § 12-12-903; and

(B) A felony offense repealed by Acts 2001, No. 1738;

(7) "Uniform order" means a uniform order to seal a record described in § 16-90-1414; and

(8) "Uniform petition" means a uniform petition to seal a record described in § 16-90-1414.

History. Acts 2013, No. 1460, § 9; 2015, No. 1198, § 7; 2019, No. 910, § 868.

Amendments. The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" in (1)(B).

16-90-1405. Eligibility to file a uniform petition to seal a misdemeanor offense or violation.

(a) A person is eligible to file a uniform petition under this subchapter to seal his or her record of a misdemeanor or violation immediately after:

(1) The completion of his or her sentence for the misdemeanor or violation, including full payment of restitution;

(2) Full payment of court costs;

(3) Full payment of driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest or conviction for the misdemeanor or violation; and

(4) The completion of all other driver's license reinstatement requirements, if a driver's license suspension was imposed as a result of the person's arrest or conviction for the misdemeanor or violation.

(b) There is not a limit to the number of times a person may file a uniform petition to seal his or her record of a misdemeanor or violation, except that the person may not file:

(1) A new uniform petition to seal one (1) of the following criminal offenses until after a period of five (5) years has elapsed since the completion of the person's sentence for the conviction:

(A) Negligent homicide, § 5-10-105, if it was a Class A misdemeanor;

(B) Battery in the third degree, § 5-13-203;

(C) Indecent exposure, § 5-14-112;

(D) Public sexual indecency, § 5-14-111;

(E) Sexual assault in the fourth degree, § 5-14-127; or

(F) Domestic battering in the third degree, § 5-26-305;

(2) A new uniform petition to seal a misdemeanor violation of driving or boating while intoxicated, § 5-65-103, until after the applicable lookback periods under § 5-65-111 have elapsed;

(3) A new uniform petition to seal a criminal offense listed in subdivisions (b)(1)(A)-(F) or subdivision (b)(2) of this section before one (1) year from the date of the order denying the previous uniform petition;

(4) A new uniform petition to seal a misdemeanor or violation before ninety (90) days from the date of an order denying a uniform petition to seal the misdemeanor or violation;

(5) A new uniform petition to seal a misdemeanor or violation under this section if an appeal of a previous denial of a uniform petition to seal a misdemeanor or violation for the same misdemeanor or violation is still pending; or

(6) A new uniform petition to seal a misdemeanor or violation under this section if:

(A) The person was a holder of a commercial driver license or commercial learner's permit at the time the misdemeanor or violation was committed; and

(B) The misdemeanor or violation was a traffic offense, other than a parking violation, vehicle weight violation, or vehicle defect violation, committed in any type of motor vehicle.

(c) Except as provided in subsection (b) of this section, a person is eligible to file a uniform petition to seal a misdemeanor or violation under this section even if his or her misdemeanor or violation occurred before January 1, 2014.

History. Acts 2013, No. 1460, § 9; 2019, No. 680, § 1[2]; 2021, No. 1037, § 1.

Publisher's Notes. Acts 2019, No. 680 contained two sections designated as Section 1.

Amendments. The 2019 amendment substituted "immediately" for "sixty (60) days" in the introductory language of (a); and substituted "a misdemeanor" for "any other misdemeanor" in (b)(3).

The 2021 amendment deleted (b)(1)(G); inserted (b)(2); redesignated former (b)(2) through (b)(5) as (b)(3) through (b)(6); and, in (b)(3), substituted "(b)(1)(A)-(F) or subdivision (b)(2)" for "(b)(1)(A)-(G)".

16-90-1406. Felony convictions eligible for sealing.

(a) Unless prohibited under § 16-90-1408 and regardless of when the felony occurred, a person may petition a court to seal a record of a conviction immediately after the completion of the person's sentence for:

(1) A nonviolent Class C felony or nonviolent Class D felony;

(2) An unclassified felony;

(3) An offense under the Uniform Controlled Substances Act, § 5-64-101 et seq., that is a Class A felony or Class B felony;

(4) Solicitation to commit, attempt to commit, or conspiracy to commit the substantive offenses listed in subdivisions (a)(1)-(3) of this section; or

(5) A felony not involving violence committed while the person was less than eighteen (18) years of age.

(b) Unless prohibited under § 16-90-1408, a person may petition a court with jurisdiction to seal a record of a conviction under this section after five (5) years have elapsed since the completion of the person's sentence for a violent Class C felony or a violent Class D felony.

(c)(1)(A) The petitioner can have no more than one (1) previous felony conviction.

(B) For the sole purpose of calculating the number of previous felony convictions under this section, all felony offenses that were committed as part of the same criminal episode and for which the person was convicted are a single conviction.

(2) The fact that a prior felony conviction has been previously sealed shall not prevent the prior felony conviction's counting as a prior felony conviction for the purposes of this subsection.

History. Acts 2013, No. 1460, § 9; 2019, No. 680, § 2[3]; 2021, No. 341, § 1.

A.C.R.C. Notes. Present subsection (b) of this section was added by Acts 2019, No. 680, § 2[3] without underlining.

Publisher's Notes. Acts 2019, No. 680 contained two sections designated as Section 1.

Amendments. The 2019 amendment substituted "immediately after" for "after five (5) years has elapsed since" in the introductory language of (a); inserted "nonviolent" twice in (a)(1); inserted (b); and redesignated former (b) as (c).

The 2021 amendment inserted "and regardless of when the felony occurred" in the introductory language in (a); substituted "the Uniform Controlled Substances Act, § 5-64-101 et seq." for "§ 5-64-401 et seq." in (a)(3); and, in (c)(2), substituted "the prior felony conviction's" for "its" and inserted the last occurrence of "felony".

16-90-1407. Special procedures for sealing a felony controlled substance possession conviction.

A person may petition the court to seal a record of a felony conviction for possession of a controlled substance, § 5-64-419, or counterfeit substance, § 5-64-441, upon the completion of the person's sentence if, prior to sentencing:

(1) An intake officer appointed by the court, where applicable, determines that the person has a drug addiction and recommends the person as a candidate for residential drug treatment;

(2) The court places the person on probation and includes as part of the terms and conditions of the probation that:

(A) The person successfully complete a drug treatment program approved by the court; and

(B) The person remain drug-free until successful completion of probation; and

(3) The person successfully completes the terms and conditions of the probation.

History. Acts 2013, No. 1460, § 9; 2021, No. 690, § 1.
Amendments. The 2021 amendment inserted "felony" in the section heading and in the introductory language.

16-90-1408. Felony convictions ineligible for sealing.

(a) A record of a conviction of any of the following offenses is not eligible to be sealed under this subchapter:
(1) A Class Y felony, Class A felony, or Class B felony, except as provided in § 16-90-1406;
(2) Manslaughter, § 5-10-104;
(3) An unclassified felony if the maximum sentence of imprisonment for the unclassified felony is more than ten (10) years;
(4) A felony sex offense; or
(5) A felony involving violence under § 5-4-501(d)(2).
(b)(1) A felony traffic offense committed in any type of motor vehicle if the person was a holder of a commercial learner's permit or commercial driver license at the time the felony offense was committed is not eligible for sealing under this subchapter.
(2) As used in this subsection, "traffic offense" does not include a parking violation, vehicle weight violation, or vehicle defect violation.

History. Acts 2013, No. 1460, § 9; 2019, No. 910, § 869; 2021, No. 341, § 2.
Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a)(6). The 2021 amendment deleted (a)(6).

16-90-1412. Sealing certain convictions for victims of human trafficking — Definition.

(a) As used in this section, "victim of human trafficking" means a person who has been subjected to trafficking of persons, § 5-18-103, or any former law of this state, law of another state, or federal law that is substantially similar.
(b)(1) A person convicted of prostitution, § 5-70-102, may file a uniform petition to seal the conviction under this section if it was obtained as a result of the person's having been a victim of human trafficking.
(2) A uniform petition under this section may be filed at any time and may be filed for a conviction imposed at any time.
(c) The court shall grant the uniform petition under this section if it finds by a preponderance of the evidence that:
(1) The petitioner was convicted of prostitution, § 5-70-102; and
(2)(A) The conviction was obtained as a result of the petitioner's having been a victim of human trafficking.
(B) A finding concerning the affirmative defense under § 5-2-210 does not affect a finding under subdivision (c)(2)(A) of this section, and the petitioner is not required to have raised the affirmative defense under § 5-2-210.
(d) If the uniform petition under this section is granted, the court shall:
(1) Issue a uniform order to seal the conviction; and

(2) With respect to the conviction for prostitution, § 5-70-102, redact the petitioner's name from all records and files related to the petitioner's:

(A) Arrest;

(B) Citation;

(C) Criminal investigation;

(D) Criminal charge;

(E) Adjudication of guilt;

(F) Criminal proceedings; and

(G) Probation for the offense.

(e)(1) Official documentation by a federal, state, or local government agency verifying that at the time of the conviction for prostitution, § 5-70-102, the petitioner was a victim of human trafficking creates a presumption under this section that the person's prostitution conviction was obtained as a result of having been a victim of human trafficking.

(2) Documentation under this subsection is not required to grant a petition under this section.

(3) Documentation under this subsection may include without limitation:

(A) Certified records of federal or state court proceedings that demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under state law or the Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 et seq., as it existed on January 1, 2013; or

(B) Certified records of "approval notices" or "law enforcement certifications" generated from federal immigration proceedings available to victims of human trafficking.

History. Acts 2015, No. 1152, § 12; 2021, No. 1106, § 5.

Amendments. The 2021 amendment added (c)(2)(B).

16-90-1413. Procedure for sealing of records.

(a)(1) A person who is eligible to have a record sealed under this subchapter may file a uniform petition in the circuit court or district court in the county where the offense was committed and in which the person was convicted for the offense he or she is now petitioning to have sealed.

(2) Except as provided in § 16-90-1405, if a person has previously petitioned the court for the sealing of a record and that petition was subsequently denied, the person may not file a uniform petition under this subchapter regarding that record until one (1) year has passed since the denial of the previous petition.

(b)(1)(A) A copy of the uniform petition shall be served upon the prosecuting attorney for the county in which the uniform petition is filed and upon the arresting agency, if the arresting agency is a named party, within three (3) days of the filing of the uniform petition.

(B) It is not necessary to make the arresting agency a party to the action.

(2)(A) The prosecuting attorney may file a notice of opposition with the court for a uniform petition seeking to seal a record of an eligible misdemeanor conviction or violation setting forth reasons for the opposition to the sealing within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

(B)(i) If notice of opposition is not filed, the court may grant the uniform petition.

(ii) If notice of opposition is filed, the court shall set the matter for a hearing if the record for which the uniform petition was filed is eligible for sealing under this subchapter unless the prosecuting attorney consents to allow the court to decide the case solely on the pleadings.

(3)(A) The prosecuting attorney may file a notice of opposition with the court for a uniform petition seeking to seal a record of an eligible felony conviction setting forth reasons for the opposition to the sealing within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

(B) If the prosecuting attorney files a notice of opposition with the court, the court may set the matter for a hearing.

(C) The court may grant the uniform petition only after the hearing described in subdivision (b)(3)(B) of this section has been conducted.

(c)(1) The court may grant or deny a uniform petition at any time after the thirty-day period described in subdivision (b)(3)(A) of this section has expired.

(2) If the court determines that the record shall be sealed under the standards of § 16-90-1415, the uniform order described in § 16-90-1414 shall be entered and filed with the circuit court clerk or district court clerk, as applicable.

(d)(1) A court clerk with whom a uniform order is filed shall certify copies of the uniform order to the prosecuting attorney who filed the underlying charges, the arresting agency, the Arkansas Crime Information Center, and, if applicable, any district court where the person appeared before the transfer or appeal of the case to circuit court.

(2) The Administrative Office of the Courts shall only accept certified copies of the uniform orders filed in circuit court.

(e)(1) The circuit court clerk, the district court clerk, and, if applicable, the district court clerk where the person appeared before the transfer or appeal of the case to circuit court shall:

(A) Remove all petitions, orders, docket sheets, receipts, and documents relating to the record;

(B) Place the records described in subdivision (e)(1)(A) of this section in a file; and

(C) Sequester the records described in subdivision (e)(1)(A) of this section in a separate and confidential holding area within the clerk's office.

(2)(A) A docket sheet shall be prepared to replace the sealed docket sheet.

(B) The replacement docket sheet shall contain the docket number, a statement that the record has been sealed, and the date that the order to seal the record was issued.

(3) All indices to the file of the person with a sealed record shall be maintained in a manner to prevent general access to the identification of the person.

(f) The prosecuting attorney shall:

(1) Remove the entire case file and documents or other items related to the record;

(2) Place the records described in subdivision (e)(1)(A) of this section in a file; and

(3) Sequester the records described in subdivision (e)(1)(A) of this section in a confidential holding area within his or her office.

(g) The arresting agency shall:

(1) Remove its entire record file and documents or other items relating to the record, including any evidence still in the arresting agency's possession;

(2) Place the records described in subdivision (e)(1)(A) of this section in a file; and

(3) Sequester the records described in subdivision (e)(1)(A) of this section in a confidential holding area within the arresting agency.

(h) Upon notification of a uniform order, all circuit clerks, district clerks, arresting agencies, and other criminal justice agencies maintaining records in a computer-generated database shall either segregate the entire record, including receipts, into a separate file or ensure by other electronic means that the sealed record shall not be available for general access unless otherwise authorized by law.

History. Acts 2013, No. 1460, § 9; 2015, No. 1152, §§ 13, 14; 2019, No. 57, § 1; 2021, No. 341, § 3.

Amendments. The 2019 amendment substituted "thirty (30) days" for "ninety (90) days" in (c)(1).

The 2021 amendment inserted the second occurrence of "upon" in (b)(1)(A); inserted the first occurrence of "uniform" in (b)(2)(A); in (b)(3)(A), inserted the first occurrence of "uniform" and added "within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date"; rewrote (b)(3)(B); added (b)(3)(C); and rewrote (c)(1).

CASE NOTES

Denial of Petition.

Circuit court did not misinterpret the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., by denying the petition to seal a misdemeanor conviction because the statute was clear that the circuit court may, in its discretion, grant the petition when no opposition is filed. Talley v. State, 2020 Ark. App. 461, 610 S.W.3d 164 (2020).

16-90-1416. Release of sealed records.

(a) The custodian of a sealed record shall not disclose the existence of the sealed record or release the sealed record except when requested by:

(1) The person whose record was sealed or the person's attorney when authorized in writing by the person;

(2) A criminal justice agency, as defined in § 12-12-1001, and the request is accompanied by a statement that the request is being made in conjunction with:

(A) An application for employment with the criminal justice agency by the person whose record has been sealed; or

(B) A criminal background check under the Polygraph Examiners Licensing Act, § 17-39-101 et seq., or the Private Security Agency, Private Investigator, and School Security Licensing and Credentialing Act, § 17-40-101 et seq.;

(3) A court, upon a showing of:

(A) A subsequent adjudication of guilt of the person whose record has been sealed; or

(B) Another good reason shown to be in the interests of justice;

(4) A prosecuting attorney, and the request is accompanied by a statement that the request is being made for a criminal justice purpose;

(5) A state agency or board engaged in the licensing of healthcare professionals;

(6) The Arkansas Crime Information Center; or

(7) The Arkansas Commission on Law Enforcement Standards and Training.

(b)(1) As used in this section, "custodian" does not mean the center.

(2) Access to data maintained by the center shall be governed by § 12-12-1001 et seq.

History. Acts 2013, No. 1460, § 9; 2015, No. 393, § 2; 2017, No. 139, § 1; 2019, No. 151, § 11.

Amendments. The 2017 amendment inserted (a)(5) and redesignated former (a)(5) as (a)(6).

The 2019 amendment added (a)(7).

16-90-1417. Effect of sealing.

(a)(1) A person whose record has been sealed under this subchapter shall have all privileges and rights restored, and the record that has been sealed shall not affect any of his or her civil rights or liberties unless otherwise specifically provided by law.

(2) A person who wants to reacquire the right to vote removed from him or her as the result of a felony conviction must follow the procedures in Arkansas Constitution, Amendment 51, § 11.

(3) The effect of this subchapter does not reconfer the right to carry a firearm if that right was removed as the result of a felony conviction.

(b)(1) Upon the entry of the uniform order, the person's underlying conduct shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the person that was sealed does not exist.

(2) This subchapter does not prevent the use of the record of a prior conviction otherwise sealed under this subchapter for the following purposes:

(A) A criminal proceeding for any purpose not otherwise prohibited by law;

(B) Determination of offender status under the former § 5-64-413;

(C) Habitual offender status, § 5-4-501 et seq.;

(D) Impeachment upon cross-examination as dictated by the Arkansas Rules of Evidence;

(E) Healthcare professional licensure by a state agency or board;

(F) Any disclosure mandated by Rule 17, 18, or 19 of the Arkansas Rules of Criminal Procedure; or

(G) Determination of certification, eligibility for certification, or of the ability to act as a law enforcement officer, by the Arkansas Commission on Law Enforcement Standards and Training.

History. Acts 2013, No. 1460, § 9; 2017, No. 139, § 2; 2019, No. 151, § 12.

Amendments. The 2017 amendment inserted "the record of" in the introductory language of (b)(2); in (b)(2)(A), substituted "A criminal" for "Any criminal"; inserted present (b)(2)(E); and redesignated former (b)(2)(E) as (b)(2)(F).

The 2019 amendment added (b)(2)(G).

CASE NOTES

Eligibility for Elective Office.

Circuit court properly declared an alderman-elect ineligible to run for public office because he had pled guilty to "voting more than once in an election" in violation of § 7-1-103; the framers of Ark. Const., Art. 5, § 9 intended for an "infamous crime" to include crimes involving elements of deceit, dishonesty, impugning on the integrity of the office, and directly impacting the person's ability to serve as an elected official; and, with the inclusion of § 7-1-103(b)(2)(A), the General Assembly deliberately chose to exclude from public office all persons found guilty of election-related misdemeanors, regardless of whether the record was later sealed. Pruitt v. Smith, 2020 Ark. 382, 610 S.W.3d 660 (2020).

16-90-1419. Filing fee.

The circuit clerk or district court clerk shall not collect a fee for filing the uniform petition under this subchapter.

History. Acts 2013, No. 1460, § 9; 2019, No. 680, § 3[4].

Publisher's Notes. Acts 2019, No. 680 contained two sections designated as Section 1.

Amendments. The 2019 amendment rewrote the section.

Subchapter 15 — Inmate Misdemeanor Offense Reconciliation

16-90-1501. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Arkansas law requires offenders to pay legal financial obligations to the state, cities, and counties imposed by various courts and law enforcement agencies;

(2) Missed payments for fines and fees may lead to charges in court for failure to pay, failure to appear, and contempt, all of which result in additional fines and penalties; and

(3) It is in the state's interest to study the efficacy of streamlining the assessment and collection of financial obligations for incarcerated or formerly incarcerated individuals.

(b) The General Assembly intends to create a framework, consistent with Arkansas Constitution, Amendment 80, and the constitutional prerogatives of the state's prosecuting attorneys and judges, to enable persons who are incarcerated in the Department of Corrections to resolve all pending misdemeanor offenses committed within this state and assist in the identification of corresponding fines, fees, and costs resulting from those misdemeanor offenses.

(c) This subchapter does not limit a court's ability to impose a financial obligation against any person who has been convicted of an offense.

History. Acts 2021, No. 1048, § 1.

16-90-1502. Compilation of pending misdemeanor offenses.

(a) A person who is incarcerated in the Department of Corrections may request of the department and shall be provided by the department a complete compilation of all outstanding arrest warrants, criminal summons, and pending misdemeanor cases for that person.

(b) The department shall provide information under subsection (a) of this section from information made available to the Arkansas Crime Information Center and the Administrative Office of the Courts.

History. Acts 2021, No. 1048, § 1.

16-90-1503. Option to resolve pending misdemeanor matters — Definition.

(a) As used in this section, "assistance" means the Department of Corrections shall make available means of communication between a person, the prosecuting attorney, the court, local law enforcement agencies, and the person's attorney, if applicable, to help facilitate the entry of pleas remotely from the department, addressing outstanding misdemeanor arrest warrants, and, when required by the court, attendance at the court for the purposes of entry of pleas, hearings, or trials.

(b)(1) A person incarcerated in the department, with the assistance of the department, may petition a court for a quick resolution of a misdemeanor offense pending in the court.

(2) The person may also request to be served with any outstanding misdemeanor arrest warrant in order to begin the process of resolving the misdemeanor arrest warrant.

(3) Upon request to the court with jurisdiction over the outstanding misdemeanor offense, the court may require the misdemeanor arrest warrant to be served by the staff of the department.

(c) Local law enforcement agencies with jurisdiction over the outstanding misdemeanor offense shall also help facilitate transportation of the person to and from the department to the court when the court requires it for trial.

History. Acts 2021, No. 1048, § 1.

16-90-1504. Remote pleading permitted.

(a) Subject to the rules of the judiciary and the local rules of the court, a person who has opted to resolve pending misdemeanor matters under this subchapter may still be permitted to enter remotely a plea of guilty or nolo contendere to any outstanding or pending misdemeanor charges from where he or she is incarcerated.

(b) A remote plea may be given only through a real-time medium with both an audio and visual feed.

History. Acts 2021, No. 1048, § 1.

16-90-1505. Negotiated pleas to run concurrently.

(a) A negotiated plea entered into between the state and a person may be imposed using the procedures under § 5-4-403.

(b)(1) The court is also encouraged to refrain from fining a person and instead sentence the person to a period of incarceration only.

(2) This subchapter does not limit a court's ability to impose a financial obligation against any person who has been convicted of an offense.

History. Acts 2021, No. 1048, § 1.

CHAPTER 91

APPEAL AND POST-CONVICTION

SUBCHAPTER.
1. APPEAL.

SUBCHAPTER 1 — APPEAL

SECTION.
16-91-110. Bail bond.
16-91-111. Appeal after confinement.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-91-101. Right generally.

CASE NOTES

Criminal Contempt.

Because criminal contempt was a misdemeanor, defendant had the right to appeal under this section and Rule 1(a) of the Rules of Appellate Procedure—Criminal, and the mootness doctrine did not bar a direct appeal, despite the fact that he had already served his sentence. Thompson v. State, 2016 Ark. 383, 503 S.W.3d 62 (2016).

A defendant's right to a direct appeal from his criminal conviction continues after his service of confinement. Thus, Swindle v. State, 373 Ark. 519, 285 S.W.3d 200 (2008), was clearly wrong to the extent that it conflicted with the Supreme Court's present holding that the mootness doctrine did not bar defendant's direct appeal of his criminal contempt conviction. Thompson v. State, 2016 Ark. 383, 503 S.W.3d 62 (2016).

16-91-110. Bail bond.

(a) The bail bond provided for in this section shall be filed in the office of the clerk of the court in which the conviction is had, and a copy thereof shall be attached to the bill of exceptions and shall be made a part of the transcript to be filed in the Supreme Court.

(b)(1) Except those offenses provided for in subdivisions (b)(2) and (3) of this section, when a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense and is sentenced to serve a term of imprisonment, and the criminal defendant has filed an appeal, the court shall not release the defendant on bail or otherwise pending appeal unless the court finds:

(A) By clear and convincing evidence that the person is not likely to flee or that there is not a substantial risk that the defendant will commit a serious crime, intimidate witnesses, harass or take retaliatory action against any juror, or otherwise interfere with the administration of justice or pose a danger to the safety of any other person; and

(B) That the appeal is not for the purpose of delay and that it raises a substantial question of law or fact.

(2) When a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense of capital murder,

§ 5-10-101, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

(3) When a criminal defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to a criminal offense of murder in the first degree, § 5-10-102, rape, § 5-14-103, aggravated robbery, § 5-12-103, aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony, or causing a catastrophe, § 5-38-202(a), or the criminal offense of kidnapping, § 5-11-102, or arson, § 5-38-301, when classified as Class Y felonies, manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, and is sentenced to death or a term of imprisonment, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

(c)(1) If the appeal is granted by the circuit court, the appeal bond shall be conditioned that the defendant surrender himself or herself in the Supreme Court upon the dismissal of the appeal or upon the rendition of final judgment upon the appeal.

(2)(A) If the defendant fails to surrender himself or herself in the Supreme Court in compliance with the conditions of his or her bond, the Supreme Court shall direct that fact to be entered on its records and shall adjudge the bail bond of the defendant, or the money deposited in lieu thereof, to be forfeited.

(B) The Clerk of the Supreme Court shall immediately make and forward to the clerk of the circuit court of the county in which the defendant was tried a certified copy of the judgment of the Supreme Court.

(3) The circuit clerk shall file the copy and shall immediately issue a summons against the sureties on the bail bond requiring them to appear and show cause why judgment should not be rendered against them for the sum specified in the bail bond on account of the forfeiture thereof, which summons shall be made returnable and shall be executed as in civil actions, and the action shall be docketed and shall proceed as an ordinary civil action.

(4) The summons may be served in any county in the state, and the service of the summons on the defendant or defendants in any county in the state shall give the court complete jurisdiction of the defendant and the cause.

(5) No pleadings on the part of the state shall be required in such cases.

(d)(1) If the court in which the case is tried refuses to grant an appeal and the appeal shall thereafter be granted by any justice or justices of the Supreme Court, the bond shall be conditioned that, upon the dismissal of the appeal or the rendition of the final judgment therein by the Supreme Court, the defendant shall surrender himself or herself in execution of the judgment.

(2) If the appeal is not granted by the court in which the defendant was convicted, the bail bond shall also be conditioned that, if the appeal is not granted by any justice or justices of the Supreme Court, the

defendant shall, immediately upon the denial of an appeal, surrender himself or herself to the county sheriff of the county in which he or she was convicted in execution of the judgment and sentence of the trial court.

History. Acts 1899, No. 158, §§ 3, 4, p. 291; C. & M. Dig., §§ 2959, 2960, 3398-3402; Acts 1927, No. 6, § 1; Pope's Dig., §§ 3775, 3776, 4241 — 4245; A.S.A. 1947, §§ 43-2715 — 43-2719; Acts 1987, No. 31, § 1; 1994 (1st Ex. Sess.), No. 3, § 1; 1997, No. 1135, § 1; 2011, No. 570, § 83; 2017, No. 367, § 14.

Amendments. The 2017 amendment inserted "aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony" in (b)(3).

16-91-111. Appeal after confinement.

(a) If a judgment of confinement in the Division of Correction has been executed before the certificate of appeal was delivered to the county sheriff whose duty it was to execute the judgment, the defendant shall remain in the division during the pendency of the appeal unless discharged by the expiration of his or her term of confinement or by pardon.

(b) Upon a reversal, if a new trial is ordered, the defendant shall be removed from the division to the county jail from which he or she was brought by the county sheriff of the county.

History. Crim. Code, § 334; C. & M. Dig., § 3418; Pope's Dig., § 4261; A.S.A. 1947, § 43-2726; Acts 2005, No. 1994, § 284; 2019, No. 910, § 877.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a); and substituted "division" for "department" in (a) and (b).

16-91-113. Matters to be considered — Preserving error — Action to be taken.

CASE NOTES

Sentence of Life Imprisonment or Death.

Because the record was not sufficient for the Supreme Court of Arkansas to conduct its review under Ark. Sup. Ct. R. 4-3(i), reversal and remand for a new trial was required; for example, despite considerable reconstruction efforts, at least 14 bench conferences, written jury instructions, and two juror notes were omitted from the record, and there was no verbatim transcript of any dialogue between counsel and the court concerning jury instructions Thrower v. State, 2018 Ark. 256, 554 S.W.3d 825 (2018).

Subchapter 2 — Arkansas Effective Death Penalty Act of 1997

16-91-202. Capital cases.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, A Jurisdictional Skirmish in the Arkansas Appellate Courts: Rule 37 Post-Conviction Appeals and the Importance of Supreme Court Rule 1-2(h), 41 U. Ark. Little Rock L. Rev. 319 (2019).

CHAPTER 92

COSTS, FEES, FINES, ETC.

A.C.R.C. Notes. Acts 2021, No. 1048, § 2, provided:

"(a) There is created the Criminal Justice Task Force on Offender Court Costs and Collections.

"(b) The purpose of the task force is to study the methods used to assess, collect, and record fines, fees, restitution, and other financial obligations of persons in the criminal justice system.

"(c) The task force shall study the feasibility of notice to outside entities in the event that a person with financial obligations to a court wins a lottery prize, sells property, or is being released from parole or probation early.

"(d)(1) The task force shall be composed of the following members:

"(A) Two (2) citizen representatives to be appointed by the Governor;

"(B) Two (2) members of the Senate, one (1) member to be appointed by the President Pro Tempore of the Senate and one (1) member to be appointed by the Chair of the Senate Judiciary Committee;

"(C) Two (2) members of the House of Representatives, one (1) member to be appointed by the Speaker of the House of Representatives and one (1) member to be appointed by the Chair of the House Committee on Judiciary;

"(D) Two (2) members appointed by the Chief Justice of the Supreme Court, one (1) of whom is a circuit court judge and one (1) of whom is a district court judge;

"(E) Two (2) members to be appointed by the Secretary of the Department of Corrections;

"(F) One (1) member representing the Association of Arkansas Counties;

"(G) One (1) member to be appointed by the Director of the Administrative Office of the Courts;

"(H) One (1) member of the Board of Corrections to be appointed by the Chair of the Board of Corrections;

"(I) One (1) member representing the Arkansas Sheriffs' Association;

"(J) One (1) member representing the Office of the Prosecutor Coordinator; and

"(K) One (1) member to be appointed by the Director of the Arkansas Crime Information Center.

"(2) If a vacancy occurs on the task force, the vacancy shall be filled by the same process as the original appointment.

"(e)(1) The legislative members of the task force shall be paid per diem and mileage as authorized by law for attendance at meetings of interim committees of the General Assembly.

"(2) Nonlegislative members of the task force shall not be compensated but may be reimbursed under § 25-16-901 et seq. for expenses actually incurred in the performance of their duties.

"(f) The task force shall establish rules and procedures for conducting its business.

"(g)(1) Ten (10) members of the task

force shall constitute a quorum for transacting business of the task force.

"(2) An affirmative vote of a majority of a quorum present shall be required for the passage of a motion or other task force action.

"(h) The Department of Corrections shall provide staff, meeting space, and materials for the task force.

"(i) The task force shall meet on or before July 15, 2021, at the call of the member appointed by the President Pro Tempore of the Senate, and organize itself by electing one (1) of its legislative members as chair and other officers as the task force may consider necessary.

"(j) The task force shall prepare and submit a report of its findings to the Cochairs of the Legislative Council and the Chair of the House Committee on Judiciary and the Chair of the Senate Judiciary Committee.

"(k) The report is due by October 31, 2022.

"(l) The task force shall expire on December 31, 2022."

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 1048, § 3: Apr. 29, 2021. Emergency clause provided: It is found and determined by the General Assembly of the State of Arkansas that the Criminal Justice Task Force on Offender Court Costs and Collections has a large task ahead of it concerning the study it is required to conduct and the report it is required to complete. Because of this, the task force needs to begin work in July of 2021, before the normal effective date of this act. Therefore, an emergency is declared to exist with regard to Section 2 of this act, and Section 2 of this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is 33 overridden, the date the last house overrides the veto."

16-92-109. Costs and fees — Reimbursement to counties — Definition.

(a)(1) As used in this section, "costs incurred by the county" means all costs incurred by the county in bringing to trial or trials any person or persons charged with a felony offense, with a crime committed in furtherance of, or in connection with, an escape from the Division of Correction, or with escape from the division.

(2) Costs shall include, but shall not be limited to, salaries and expenses, except normal salaries and expenses incurred by the prosecuting attorney in investigation and prosecution, by the county sheriff in investigation and custody, and by the public defender or court-appointed attorney or attorneys in investigation and defense, as well as all other costs, including the expenses involved in the trial itself.

(3) Expenses shall also include extraordinary expenses for such services as witness fees and expenses, court-appointed expert witnesses, reporter fees, costs of preparing transcripts, necessary courtroom security reasonably required to protect the court and participants, and other direct trial costs.

(4) Trial shall be deemed to include all pretrial hearings and post-conviction proceedings, if any.

(b) Whenever a trial is held in which a crime committed in furtherance of, or in connection with, an escape from the division is charged or whenever a trial is held for escape from the custody of the division, the county or counties responsible for the trial or trials of the person or persons charged may apply to the Secretary of the Department of Finance and Administration for reimbursement of the total costs incurred by the county or counties in each case.

(c)(1) The county responsible for the costs of the felony proceedings or trial on charges of escape or in connection with escape from the division, shall prepare a statement of all costs incurred in connection with the proceedings, which shall be certified by the presiding judge of the circuit court or courts.

(2) The statement of costs incurred by the county or counties shall be sent to the secretary together with the county's application for reimbursement.

(d)(1) The secretary shall audit and examine all statements of costs incurred by the county received by him or her in accordance with this section and shall determine whether the costs included in the statements comply with the provisions of this section.

(2) The secretary shall cause the amount of such costs as he or she determines comply with this section to be paid to the county or counties from the Trial Expense Assistance Fund, which is established by this section on the books of the Treasurer of State, the secretary, and the Auditor of State, which shall consist of moneys transferred to the Trial Expense Assistance Fund, as costs are incurred, from the Miscellaneous Revolving Fund.

(e) The secretary may make disbursements from the Trial Expense Assistance Fund to pay court-awarded attorney's fees and costs to court-appointed attorneys for indigent defendants.

History. Acts 1979, No. 24, §§ 1-5; 1980 (1st Ex. Sess.), No. 39, § 1; 1985, No. 419, § 1; A.S.A. 1947, §§ 43-2408.1 — 43-2408.5; Acts 1993, No. 793, § 1; 1993, No. 1193, § 20; 2019, No. 910, § 878.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" throughout the section; substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (b); and substituted "secretary" for "director" throughout (c), (d), and (e).

16-92-112. Costs and fees — Liability of state.

(a) The costs in all state prosecutions for any offenses which may be committed in or in respect of the Division of Correction shall be paid out of the State Treasury.

(b) In the cases mentioned in subsection (a) of this section, it shall be the duty of the judge to cause to be made out an accurate bill of costs therein and to certify to its correctness; it shall be the duty of the Auditor of State to draw his or her warrant for the amount when an appropriation shall be made therefor.

History. Acts 1848, §§ 1-3, p. 41; C. & M. Dig., §§ 3276, 3277; Pope's Dig., §§ 4124, 4125; A.S.A. 1947, §§ 43-2409, 43-2410; Acts 2019, No. 910, § 879.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a).

CHAPTER 93

PROBATION AND PAROLE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-93-101. Definitions.

As used in this act:

(1) "Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:

(A) Targets and prioritizes the specific criminal risk factors of the offender based upon his or her assessment results;

(B) Matches the type and intensity of supervision and treatment conditions to the offender's level of risk, criminal risk factors, and individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;

(C) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and

(D) Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors;

(2) "Criminal risk factors" are characteristics and behaviors that affect a person's risk for committing crimes and may include without limitation the following risk and criminogenic need factors:

(A) Antisocial personality;

(B) Criminal thinking;

(C) Criminal associates;

(D) Dysfunctional family;

(E) Low levels of employment or education; and

(F) Substance abuse;

(3) "Detriment to the community" means a person who has:

(A) Demonstrated a pattern of behavior that indicates disregard for the safety and welfare of others;

(B) Exhibited violence or repeated violent tendencies;

(C) Has been convicted of a felony involving violence, as defined under § 5-4-501(d)(2); or

(D) During the three (3) calendar years before the person's parole hearing:

(i) Demonstrated a documented lack of respect for authority towards law enforcement or prison officials while in the custody of the Division of Correction, the Division of Community Correction, or a law enforcement agency; or

(ii) Accrued multiple disciplinary violations while in the custody of the Division of Correction, the Division of Community Correction, or a law enforcement agency, including at least one (1) disciplinary violation involving violence or sexual assault while in the custody of the Division of Correction, the Division of Community Correction, or a law enforcement agency;

(4) "Evidence-based practices" means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism;

(5) "Intermediate sanctions" means a nonprison accountability measure imposed on an offender in response to a violation of supervision conditions. Such measures may include without limitation:

(A) The use of electronic supervision tools;
(B) Drug and alcohol testing or monitoring;
(C) Day or evening reporting;
(D) Restitution;
(E) Forfeiture of earned discharge credits;
(F) Rehabilitative interventions such as substance abuse and mental health treatment;
(G) Reporting requirements to probation or parole officers;
(H) Community service or community work project;
(I) Secure or unsecure residential treatment facilities; and
(J) Short-term, intermittent incarceration;

(6) "Jacket review" means the review of the file of a transfer-eligible inmate located at any correctional facility in the state by an individual staff member or team of staff members of the Division of Community Correction for purposes of preparing the inmate's application for parole consideration by the Parole Board;

(7) "Parole" means the release of the prisoner into the community by the board prior to the expiration of his or her term, subject to conditions imposed by the board and to the supervision of the Division of Community Correction. When a court or other authority has filed a warrant against the prisoner, the board may release him or her on parole to answer the warrant of the court or authority;

(8) "Probation" means a procedure under which a defendant, found guilty upon verdict or plea, is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of the Division of Community Correction, but only if the supervision is requested in writing by the court;

(9) "Recidivism" means the return to incarceration in a Division of Correction or Division of Community Correction community correctional facility other than a technical violator program within a three-year period;

(10) "Risk needs assessment review" means an examination of the results of a validated risk-needs assessment;

(11) "Serious conditions violation" means a violation of the conditions of a parolee's parole or probationer's probation that results from the parolee's or probationer's absenting himself or herself from supervision for a period of six (6) months or more or an arrest for a misdemeanor offense that does not involve:

(A) An act involving a violent misdemeanor that provides the prosecuting attorney with the option to revoke the probationer's probation or parolee's parole, or allow the Division of Community Correction to utilize the sanctions provided under this chapter;

(B) An offense for which a conviction would require the person to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(C) A misdemeanor offense of harassment or stalking or that contains a threat of violence to a victim, or a threat of violence to a family member of the victim of the offense for which the defendant was placed on probation or parole;

(D) A misdemeanor offense of driving or boating while intoxicated, § 5-65-103, when the probationer or parolee is currently being supervised for a felony offense of § 5-65-103, § 5-10-104, or § 5-10-105, and the felony offense was alcohol-related or drug-related; or

(E) Except for an offense under the Uniform Controlled Substances Act, § 5-64-101 et seq., a misdemeanor offense that is a lesser included offense or falls within the same chapter of the Arkansas Criminal Code of the offense for which the defendant was placed on probation or parole;

(12) "Technical conditions violation" means:

(A) A violation of the conditions of a parolee's parole or a probationer's probation that results from a noncriminal act or positive drug screen; or

(B) The parolee's or probationer's absenting himself or herself from supervision for a period of less than six (6) months;

(13)(A) "Treatment" means targeted interventions that focus on criminal risk factors in order to reduce the likelihood of criminal behavior.

(B) Treatment options may include without limitation:

(i) Community-based programs that are consistent with evidence-based practices;

(ii) Cognitive behavioral programs;

(iii) Inpatient and outpatient substance abuse and mental health programs; and

(iv) Other available prevention and intervention programs that have been scientifically proven to reliably reduce recidivism; and

(14) "Validated risk-needs assessment" means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 23; A.S.A. 1947, § 43-2801; Acts 2005, No. 1994, § 286; 2011, No. 570, § 84; 2015, No. 895, § 18; 2017, No. 423, § 16; 2019, No. 910, §§ 880-885; 2021, No. 327, § 1.

Amendments. The 2017 amendment added the definitions for "Serious conditions violation" and "Technical conditions violation".

The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

The 2021 amendment inserted "the parolee's or probationer's absenting himself or herself from supervision for a period of six (6) months or more or" in the introductory language of (11); and, in (12)(B), substituted "parolee's or probationer's" for "parolee or probationer" and added "for a period of less than six (6) months".

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

16-93-103. Authority of officers to make arrests and carry firearms.

(a) A probation officer appointed by a circuit court or district court, excluding a juvenile probation officer, and a parole and probation officer employed by the Division of Community Correction who is a currently certified law enforcement officer may execute, serve, and return all lawful warrants of arrest issued by the State of Arkansas or any political subdivision of the state and are otherwise authorized to make lawful arrests as is any law enforcement officer of the State of Arkansas.

(b) A parole and probation officer either employed by the division or another entity authorized to employ a parole and probation officer may carry a:

(1) Firearm during all hours in which he or she is actively engaged in the obligations and duties of the office to which he or she is appointed or employed, pursuant to selection and training requirements under §§ 12-9-104, 12-9-106, and 12-9-107; and

(2) Nonstate-issued firearm during all hours in which he or she is not actively pursuing the obligations and duties of the office to which he or she is appointed.

(c) A parole and probation officer employed by the division may also carry:

(1) A nonstate-issued firearm as a secondary weapon while actively engaged in the duties of the office to which he or she is appointed or employed; and

(2) A state-issued firearm during all hours in which he or she is not actively engaged in the duties of the office to which he or she is appointed or employed, except that a parole and probation officer may not carry a firearm issued by the division while the parole and probation officer is actively working at employment other than for the division.

History. Acts 1983, No. 617, § 1; A.S.A. 1947, § 43-2332.1; Acts 1997, No. 283, § 1; 1999, No. 1456, § 1; 2003, No. 1185, § 218; 2005, No. 1994, § 324; 2017, No. 239, § 1.

Amendments. The 2017 amendment, in (a), inserted "circuit court or district" following "appointed by", and substituted "and a parole" for "whether a circuit court or district court, and any parole", and "of the state and are" for "thereof and is"; and rewrote (b) and (c).

16-93-104. Supervision fee — Direct payment by offender — Failure to pay.

(a)(1) An offender on probation, parole, or transfer under supervision of the Division of Community Correction shall pay to the division a monthly supervision fee.

(2)(A) The monthly supervision fee under subdivision (a)(1) of this section is thirty-five dollars ($35.00).

(B) However, by rule the Board of Corrections may increase or decrease the monthly supervision fee by not more than twenty

percent (20%) of the amount of the monthly supervision fee assessed at the time of the increase or decrease, subject to the following:

(i) A rule under this subdivision (a)(2)(B) may provide for an individualized monthly supervision fee assessment process;

(ii) A rule under this subdivision (a)(2)(B) may provide for the decrease of a monthly supervision fee if an emergency is declared under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.;

(iii) An increase in a monthly supervision fee may not result in the monthly supervision fee exceeding fifty dollars ($50.00);

(iv) A monthly supervision fee may not be increased more than one (1) time per two (2) calendar years; and

(v) An increase or decrease in a monthly supervision fee shall be approved by the Legislative Council as required under § 10-3-309.

(C) The division shall give notice of at least thirty (30) days to all parolees and probationers of an increase or decrease in the monthly supervision fee.

(3) The Director of the Division of Community Correction or his or her designee shall deposit each payment received under this subsection into the State Treasury as special revenues credited to the Community Correction Revolving Fund.

(4) Expenditures from the fund shall be used for continuation and expansion of community correction programs and supervision as established and approved by the Board of Corrections.

(b)(1) When an offender on probation defaults in the payment of supervision fees or any installment thereof, the court may require the offender to show cause why he or she would not be imprisoned for nonpayment.

(2) The offender shall not be imprisoned if the offender is financially unable to make the payments and states so to the court in writing, under oath, and the court so finds.

(3) Unless the offender shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court may order the defendant imprisoned until the payments are made.

(4) If the court determines that the default in payment is not attributable to the causes specified in subdivision (b)(3) of this section, the court may enter an order allowing the offender additional time for payment, reducing the amount of each installment, or revoking the fees or the unpaid portion thereof in whole or in part.

(c)(1) The offender on parole may be imprisoned for violation of parole if the offender is financially able to make the payments and if the payments are not made and the Parole Board so finds, subject to the limitations set out in this subsection.

(2) The offender shall not be imprisoned if the offender is financially unable to make the payments and states so under oath to the Parole Board in writing, and the Parole Board so finds.

(d) Court costs under § 16-10-305 shall be collected in full before any fees are collected under this section.

History. Acts 1981, No. 70, §§ 1, 2; 1983, No. 887, §§ 1, 2; A.S.A. 1947, §§ 43-2808.1, 43-2808.2; Acts 1997, No. 278, § 1; 2011, No. 570, § 85; 2013, No. 282, § 11; 2019, No. 249, § 1; 2019, No. 315, § 1307; 2021, No. 625, § 1.

A.C.R.C. Notes. Acts 2019, No. 315, § 1307, amended the introductory language of subdivision (a)(2)(B)(ii) of this section to replace "regulations" with "rules". However, Acts 2019, No. 249, § 1, specifically repealed subdivision (a)(2)(B)(ii) of this section, and, pursuant to Acts 2019, No. 315, § 3204(c), was the later act.

Amendments. The 2019 amendment by No. 249, deleted (a)(2)(B) and deleted the (a)(2)(A) designation; deleted "Twenty-five dollars ($25.00) of" preceding "each payment" in (a)(2); and inserted "and supervision" in (a)(3).

The 2019 amendment by No. 315 substituted "rules" for "regulations" in the introductory language of (a)(2)(B)(ii).

The 2021 amendment substituted "supervision fee" for "fee of thirty-five dollars ($35)" in (a)(1); added (a)(2) and redesignated former (a)(2) and (a)(3) as (a)(3) and (a)(4); inserted "under this subsection" in (a)(3); and made a stylistic change.

16-93-106. Warrantless search by any law enforcement officer of probationer or parolee.

(a)(1) A person who is placed on supervised probation or is released on parole under this chapter is required to agree to a waiver as a condition of his or her supervised probation or parole that allows any certified law enforcement officer or Division of Community Correction officer to conduct a warrantless search of his or her person, place of residence, or motor vehicle at any time, day or night, whenever requested by the certified law enforcement officer or division officer.

(2) A warrantless search that is based on a waiver required by this section shall be conducted in a reasonable manner but does not need to be based on an articulable suspicion that the person is committing or has committed a criminal offense.

(b)(1) A person who will be placed on supervised probation or parole and is required to agree to the waiver required by this section shall acknowledge and sign the waiver.

(2) If the person fails to acknowledge and sign the waiver required by this section, he or she is ineligible to be placed on supervised probation or parole.

(c) As used in this section, "residence" includes a garage or outbuilding on the property of a residence.

History. Acts 2015, No. 895, § 19; 2019, No. 136, § 1.

Amendments. The 2019 amendment substituted "department officer" for "Department of Community Correction officer" in (a)(1); and added (c).

CASE NOTES

Constitutionality.

Circuit court properly denied defendant's motion to suppress evidence of drugs, paraphernalia, and/or contraband found in his home after police officers conducted a warrantless search based on his status as a parolee; while no parole officer was present, this section — authorizing any certified law enforcement officer or Division of Community Correction

officer to conduct a warrantless search of a parolee's person, place of residence, or motor vehicle at any time — is constitutional, and the statute does not require a "reasonable grounds" basis for a search. Clingmon v. State, 2021 Ark. App. 107, 620 S.W.3d 184 (2021).

16-93-107. Medicaid eligibility of parolee or probationer — Definition.

(a) The Division of Correction shall screen inmates nearing release from incarceration and the Division of Community Correction shall screen parolees and probationers under supervision for Medicaid eligibility.

(b) If an inmate nearing release from incarceration, parolee, or probationer receives medical services, including substance abuse and mental health treatment, that meet criteria for Medicaid coverage, the parole officer, probation officer, or Division of Correction official or Division of Community Correction official may apply for Medicaid coverage for the inmate nearing release from incarceration, parolee, or probationer under this section.

(c)(1) The inmate nearing release from incarceration, parolee, or probationer may designate an authorized representative for the purposes of filing a Medicaid application and complying with Medicaid requirements for determining and maintaining eligibility.

(2) However, the parole officer, probation officer, or Division of Correction official or Division of Community Correction official shall be the authorized representative for purposes of establishing and maintaining Medicaid eligibility under this subsection if:

(A) The inmate nearing release from incarceration, parolee, or probationer does not designate an authorized representative within three (3) business days after request; or

(B) The authorized representative designated under subdivision (c)(1) of this section does not file a Medicaid application within three (3) business days after appointment and request.

(d) An authorized representative under this section:

(1) Shall have access to the information necessary to comply with Medicaid requirements; and

(2) May provide and receive information in connection with establishing and maintaining Medicaid eligibility, including confidential information.

(e)(1) The parole officer, probation officer, or Division of Correction official or Division of Community Correction official or the designee of the parole officer, probation officer, or Division of Correction official or Division of Community Correction official may access information necessary to determine if a Medicaid application has been filed on behalf of the inmate nearing release from incarceration, parolee, or probationer.

(2) Access under subdivision (e)(1) of this section shall be to:

(A) Establish Medicaid eligibility;

(B) Provide healthcare services; or

(C) Pay for healthcare services.

(f) As used in this section, "Medicaid eligibility" means eligibility for any healthcare coverage offered by the Department of Human Services.

History. Acts 2015, No. 895, § 20; 2019, No. 910, §§ 886-888.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

16-93-109. Medicaid reimbursement for essential healthcare services.

Unless otherwise prohibited by law, the Department of Human Services shall cooperate with the Division of Correction and the Division of Community Correction to establish protocols for utilizing Medicaid to reimburse the Division of Correction, Division of Community Correction, Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, Division of Youth Services of the Department of Human Services, a healthcare provider, or a third party for essential healthcare services, including mental health and substance abuse treatment.

History. Acts 2015, No. 895, § 21; 2017, No. 913, § 43; 2019, No. 910, § 889.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services".

The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

16-93-111. Parole or probation prohibitions for sex offenses.

A person required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., who is under felony probation or released on parole shall have as a term and condition of his or her probation or parole a prohibition against recording a person under fourteen (14) years of age under § 5-14-137 if he or she is assessed as a Level 3 or Level 4 offender.

History. Acts 2019, No. 621, § 4.

Subchapter 2 — Parole Board

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-93-201. Creation — Members — Qualifications and training — Definitions.

(a)(1) There is created the Parole Board, to be composed of seven (7) members to be appointed from the state at large by the Governor and confirmed by the Senate.

(2)(A)(i) A member of the board shall be a full-time official of this state and shall not have any other employment for the duration of his or her appointment to the board.

(ii)*(a)* A member of the board who is currently serving as of April 1, 2015, shall terminate any other employment that has not been approved as required by subdivision (a)(2)(A)(ii)*(b)* of this section.

(b) A member may engage in employment that has a limited time commitment with approval from the Chair of the Parole Board.

(B)(i) The Governor shall appoint one (1) member as the chair who shall be the chief executive, administrative, budgetary, and fiscal officer of the board and the chair shall serve at the will of the Governor.

(ii) The chair shall have general supervisory duties over the members and staff of the board but may not remove a member of the board except as provided under subsection (e) of this section.

(iii) The board may review and approve budget and personnel requests prior to submission for executive and legislative approval.

(C) The board shall elect from its membership a vice chair and a secretary who shall assume, in that order and with the consent of the Governor, the duties of the chair in the case of extended absence, vacancy, or other similar disability of the chair until the Governor designates a new chair of the board.

(3) Each member shall serve a seven-year term, except that the terms shall be staggered by the Governor so that the term of one (1) member expires each year.

(4)(A) A member shall have at least a bachelor's degree from an accredited college or university and the member should have no less than five (5) years' professional experience in one (1) or more of the following fields:

(i) Parole supervision;

(ii) Probation supervision;
(iii) Corrections;
(iv) Criminal justice;
(v) Law;
(vi) Law enforcement;
(vii) Psychology;
(viii) Psychiatry;
(ix) Sociology;
(x) Social work; or
(xi) Other related field.

(B) If the member does not have at least a bachelor's degree from an accredited college or university, he or she shall have no less than seven (7) years' experience in a field listed in subdivision (a)(4)(A) of this section.

(5)(A) A member appointed after July 1, 2011, whether or not he or she has served on the board previously, shall complete a comprehensive training course developed in compliance with guidelines from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.

(B) All members shall complete annual training developed in compliance with guidelines from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.

(C) Training components under this subdivision (a)(5) shall include an emphasis on the following subjects:

(i) Data-driven decision making;

(ii)*(a)* Evidence-based practice.

(b) As used in this section, "evidence-based practice" means practices proven through research to reduce recidivism;

(iii) Stakeholder collaboration; and

(iv) Recidivism reduction.

(b) If any vacancy occurs on the board prior to the expiration of a term, the Governor shall fill the vacancy for the remainder of the unexpired term, subject to confirmation by the Senate at its next regular session.

(c) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d)(1) Four (4) members of the board shall constitute a quorum for the purpose of holding an official meeting.

(2) However, the affirmative vote of at least five (5) of the members of the board is required for any action by the board.

(e)(1) A member of the board may be removed by the Governor after the Governor has received notification from the chair that the member:

(A) Has been derelict in his or her duties as a member of the board; or

(B) No longer meets the eligibility requirements to serve as a member of the board.

(2) The member of the board who has been reported to the Governor under subdivision (e)(1) of this section shall receive written notice of the

notification by the chair to the Governor and the member of the board shall be allowed an opportunity to respond within seven (7) days.

(f)(1) When exercising his or her duties with regards to the board, the chair shall work in consultation with the Secretary of the Department of Corrections.

(2)(A) As used in this subsection, "consultation" means coordination with and receiving input, review, and recommendations from the Secretary of the Department of Corrections.

(B) "Consultation" does not include approval or consent of the Secretary of the Department of Corrections, except that the Secretary of the Department of Corrections shall review and approve any legislative proposals initiated by or on behalf of the board.

History. Acts 1989, No. 937, §§ 2, 3, 5; 1993, No. 530, § 1; 1993, No. 547, § 1; 1995, No. 285, § 1; 1995, No. 381, § 1; 1997, No. 250, § 120; 1999, No. 979, § 1; 2005, No. 1033, § 1; 2007, No. 697, § 3; 2011, No. 570, § 86; 2015, No. 895, § 22; 2015, No. 1288, § 1; 2021, No. 148, § 1.

Amendments. The 2021 amendment added (f).

16-93-204. Executive clemency.

CASE NOTES

In General.

There is simply no requirement under this section to provide notice when the Arkansas Parole Board recommends against granting clemency. Lee v. Hutchinson, 854 F.3d 978 (8th Cir.), cert. denied, 137 S. Ct. 1623, 197 L. Ed. 2d 748 (2017).

16-93-206. Parole revocation review — Jurisdiction.

(a) The Parole Board shall serve as the revocation review board for any person subject to either parole or transfer from prison.

(b) Revocation proceedings for either parole or transfer shall follow all legal requirements applicable to parole and shall be subject to any additional policies and rules set by the board.

History. Acts 1993, No. 530, § 2; 1993, No. 547, § 2; 1994 (1st Ex. Sess.), No. 8, § 1; 1994 (1st Ex. Sess.), No. 9, § 1; 1999, No. 1035, § 1; 2003, No. 1390, § 9; 2007, No. 600, § 1; 2007, No. 866, § 1; 2011, No. 570, § 87; 2019, No. 315, § 1308.

Amendments. The 2019 amendment substituted "policies and rules" for "policies, rules, and regulations" in (b).

16-93-207. Applications for pardon, commutation of sentence, and remission of fines and forfeitures.

(a)(1)(A) At least thirty (30) days before granting an application for pardon, commutation of sentence, or remission of fine or forfeiture, the Governor shall file with the Secretary of State a notice of his or her intention to grant the application.

(B) The Governor shall also direct the Division of Correction to send notice of his or her intention to the judge, the prosecuting

attorney, and the county sheriff of the county in which the applicant was convicted and, if applicable, to the victim or the victim's next of kin.

(2) The filing of the notice shall not preclude the Governor from later denying the application, but any pardon, commutation of sentence, or remission of fine or forfeiture granted without filing the notice shall be null and void.

(b) If the Governor does not grant an application for pardon, commutation of sentence, or remission of fine or forfeiture within two hundred forty (240) days of the Governor's receipt of the recommendation of the Parole Board regarding the application, the application shall be deemed denied by the Governor, and any pardon, commutation of sentence, or remission of fine or forfeiture granted after the two-hundred-forty-day period shall be null and void.

(c)(1)(A) Except as provided in subdivision (c)(3) and subsection (d) of this section, if an application for pardon, commutation of sentence, or remission of fine or forfeiture is denied in writing by the Governor, the person filing the application shall not be eligible to file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense for a period of four (4) years from the date of filing the application that was denied.

(B) Any person who made an application for pardon, commutation of sentence, or remission of fine or forfeiture that was denied on or after July 1, 2004, shall be eligible to file a new application four (4) years after the date of filing the application that was denied.

(2) If an application for pardon, commutation of sentence, or remission of fine or forfeiture is denied by the Governor pursuant to subsection (b) of this section, the person filing the application may immediately file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense.

(3)(A) The board may waive the waiting period for filing a new application for pardon, commutation of sentence, or remission of fine or forfeiture described in subdivision (c)(1)(A) of this section if:

(i) It has been at least twelve (12) months after the date of filing the application that was denied; and

(ii) The board determines that the person whose application was denied has established that:

(a) New material evidence relating to the person's guilt or punishment has been discovered;

(b) The person's physical or mental health has substantially deteriorated; or

(c) Other meritorious circumstances justify a waiver of the waiting period.

(B)(i) The board shall promulgate rules that shall establish policies and procedures for waiver of the waiting period.

(ii) The board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) Except as provided in subdivision (d)(3) of this section, if an application for pardon, commutation of sentence, or remission of fine or forfeiture of a person sentenced to life imprisonment without parole is denied in writing by the Governor, the person filing the application shall not be eligible to file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense for a period of:

(A) Six (6) years from the date of the denial; or

(B) Eight (8) years from the date of the denial if the applicant is serving a sentence of life without parole for capital murder, § 5-10-101.

(2) If an application for pardon, commutation of sentence, or remission of fine or forfeiture of a person sentenced to life imprisonment without parole is denied by the Governor pursuant to subsection (b) of this section, the person filing the application may immediately file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense.

(3)(A) The board or the Governor may waive the waiting period for filing a new application for pardon, commutation of sentence, or remission of fine or forfeiture described in subdivision (d)(1) of this section if:

(i) It has been at least twelve (12) months after the date of filing the application that was denied; and

(ii) The board determines that the person whose application was denied has established that:

(a) New material evidence relating to the person's guilt or punishment has been discovered;

(b) The person's physical or mental health has substantially deteriorated; or

(c) Other meritorious circumstances justify a waiver of the waiting period.

(B)(i) The board shall promulgate rules that shall establish policies and procedures for waiver of the waiting period.

(ii) The board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) If an application for pardon, commutation of sentence, or remission of fine is granted, the Governor shall:

(1) Include in his or her written order the reasons for granting the application; and

(2) File with the Senate and the House of Representatives a copy of the order that includes:

(A) The applicant's name;

(B) The offense of which the applicant was convicted;

(C) The sentence imposed upon the applicant;

(D) The date that the sentence was imposed; and

(E) The effective date of the pardon, commutation of sentence, or remission of fine.

(f)(1) This section shall not apply to reprieves.

(2) Reprieves may be granted as presently provided by law.

History. Acts 1993, No. 5, §§ 1-4; 1995, No. 1195, § 1; 1999, No. 498, § 2; 2005, No. 1975, §§ 4, 5; 2005, No. 2097, § 2; 2007, No. 183, § 1; 2011, No. 1169, § 1; 2013, No. 131, §§ 1, 2; 2019, No. 910, § 890.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a)(1)(B).

16-93-208. Services and equipment.

The Division of Correction and the Division of Community Correction may provide services, furnishings, equipment, and office space to assist the Parole Board in fulfilling the purposes for which the board was created by law.

History. Acts 1995, No. 195, § 3; 2019, No. 910, § 891.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction".

16-93-211. Early release to transitional housing facilities — Definition.

(a)(1) As used in this section, "transitional housing" means a program that provides housing for one (1) or more offenders who have been:

(A) Transferred or paroled from the Division of Correction by the Parole Board;

(B) Placed on probation by a circuit court or district court; or

(C) Administratively transferred from the Division of Correction to the Division of Community Correction for participation in a reentry program.

(2) An offender's home or the residence of an offender's family member shall not be considered a transitional housing facility for purposes of this section.

(b)(1) To assist an offender who will be eligible for parole or transfer to successfully reintegrate into the community, the board is authorized to place the offender into approved transitional housing up to one (1) year prior to the offender's date of eligibility for parole or transfer.

(2) Subject to conditions of release and consistent with rules promulgated by the board, placement in a transitional housing facility must be preceded by:

(A) The provision of all applicable notices under § 16-93-615; and

(B) A hearing conducted by the board.

(c) The decision to place an offender in transitional housing and the establishment of conditions of release by the board must be based on a reasoned, rational plan developed in conjunction with an accepted risk-needs assessment tool such that each placement decision is based on:

(1) Established criteria; and

(2) A determination that there is a reasonable probability that an offender can be placed in a transitional housing facility without detriment to:

(A) The community; or

(B) The offender.

(d) Conditions of release imposed by the board must at a minimum include a curfew requiring an offender placed in transitional housing to present himself or herself at a scheduled time to be confined in the transitional housing facility.

(e) An offender placed in transitional housing by the board will be supervised by officers of the Division of Community Correction.

(f) An offender who without permission leaves the custody of the transitional housing facility in which he or she is placed may be subject to criminal prosecution for first degree escape, § 5-54-110, second degree escape, § 5-54-111, and third degree escape, § 5-54-112.

(g) Revocation of placement in transitional housing must follow the revocation proceedings established in § 16-93-705.

History. Acts 2005, No. 679, § 1; 2011, No. 570, § 89; 2015, No. 146, § 2; Acts 2019, No. 910, §§ 892-894.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a)(1)(A) and (a)(1)(C); and substituted "Division of Community Correction" for "Department of Community Correction" in (a)(1)(C) and (e).

16-93-213. Records to be posted on a website.

(a) To the extent permitted by federal law, the Parole Board shall post on the board's website the following information concerning an inmate who is being considered for parole no less than six (6) months before his or her transfer-eligibility or parole-eligibility date, or the date the board determines eligibility for parole or transfer if the inmate is past his or her transfer-eligibility or parole-eligibility date:

(1) The name of the inmate;

(2) The Division of Correction identification number of the inmate;

(3) A current photograph of the inmate;

(4) The projected hearing date of the inmate;

(5) The number of times, if any, probation or parole has been revoked from the inmate; and

(6) A link to information required to be posted about the inmate by the division under § 12-27-145.

(b) The information required to be posted on the board's website:

(1) Shall be consistently updated as required to be the most current information available to the board;

(2) Shall instruct a victim of a crime as defined by § 16-90-1101 or § 16-90-1114 on how to contact the board and provide information on the inmate; and

(3) May be removed when the inmate has been either granted or denied parole.

History. Acts 2015, No. 1265, § 11; 2019, No. 910, §§ 895, 896.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a)(2) and (a)(6).

Subchapter 3 — Probation and Suspended Imposition of Sentence

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Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-93-303. Probation — First time offenders — Procedure.

(a)(1)(A)(i) When an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the circuit court or district court, in the case of a defendant who previously has not been convicted of a felony, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant, may defer further proceedings and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the circuit court or district court.

(ii) A sentence of a fine not exceeding three thousand five hundred dollars ($3,500) or an assessment of court costs against a defendant does not negate the benefits provided by this section or cause the probation placed on the defendant under this section to constitute a conviction except under subsections (c)-(e) of this section.

(B) However, a person who is found guilty of or pleads guilty or nolo contendere to one (1) or more of the following offenses is not eligible for sealing of the record under this subchapter:

(i) An offense that requires the person to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(ii) Public sexual indecency, § 5-14-111;

(iii) Indecent exposure, § 5-14-112;

(iv) Bestiality, § 5-14-122;

(v) Exposing another person to the human immunodeficiency virus, § 5-14-123; or

(vi) A serious felony involving violence or a felony involving violence as provided in § 5-4-501.

(2) Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(3) This subsection does not require or compel any court of this state to establish first offender procedures as provided in this section and §§ 16-93-301 and 16-93-302.

(b) Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order that shall effectively dismiss the case, discharge the defendant, and seal the record, if consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(c) During the period of probation described in subdivision (a)(1)(A)(i) of this section, a defendant is considered as not having a felony conviction except for:

(1) Application of any law prohibiting possession of a firearm by certain persons;

(2) A determination of habitual offender status;

(3) A determination of criminal history;

(4) A determination of criminal history scores;

(5) Sentencing; and

(6) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

(d) After successful completion of probation placed on the defendant under this section, a defendant is considered as not having a felony conviction except for:

(1) A determination of habitual offender status;

(2) A determination of criminal history;

(3) A determination of criminal history scores;

(4) Sentencing; and

(5) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

(e) The eligibility to possess a firearm of a person whose record has been sealed under this subchapter and the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., is governed by § 5-73-103.

(f) A court as a condition of probation shall order the defendant to:

(1)(A)(i) Enroll in and complete a vocational, technical, educational, or similar program if the court finds that the defendant's lack of an

employable or marketable skill contributes to the defendant's being unemployed.

(ii) The court may order the person to pay tuition for any vocational, technical, educational, or similar program in installments after the completion of the education or training program.

(B) If the defendant is on probation at the end of the vocational, technical, educational, or similar program required under subdivision (f)(1)(A) of this section, he or she shall be required to work in suitable employment for the remainder of his or her probation or for three (3) years, whichever occurs earlier; or

(2) Work consistently in suitable employment for the entire duration of his or her probation or for three (3) years, whichever occurs earlier.

History. Acts 1975, No. 346, §§ 2, 3; A.S.A. 1947, §§ 43-1232, 43-1233; Acts 1995, No. 998, § 9; 1999, No. 1407, § 1; 2003, No. 1185, § 219; 2003, No. 1753, § 2; 2007, No. 744, § 2; 2011, No. 570, § 90; 2011, No. 1233, § 1; 2013, No. 1460, § 11; 2015, No. 1198, § 8; 2017, No. 662, § 1; 2019, No. 385, § 1.

Amendments. The 2017 amendment, in (a)(1)(A)(i), deleted "the judge of" preceding the first occurrence of "the circuit court" and inserted "circuit court or district" near the end; substituted "is not" for "shall not" in (a)(1)(A)(iii); redesignated former (a)(1)(B) as the present introductory language of (a)(1)(B); substituted "one (1) or more of the following offenses" for "a sexual offense as defined by § 5-14-101 et seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605" in the introductory language of (a)(1)(B); added (a)(1)(B)(i) through (a)(1)(B)(v); and made a stylistic change.

The 2019 amendment deleted (a)(1)(A)(iii); and added (a)(1)(B)(vi).

CASE NOTES

Analysis

Applicability.
Violation of Probation.

Applicability.

If subdivision (a)(1)(B) of this section applies, then the trial court lacks authority to impose any sentence under subdivision (a)(1)(A). Wilson v. State, 2019 Ark. App. 116 (2019).

Violation of Probation.

Circuit court correctly refused to dismiss defendant's prior case under the First Offender Act, § 16-93-301 et seq.; although the only order in that case was the order placing defendant on probation, that was not dispositive of whether she successfully completed the terms of her probation. Defendant had not fulfilled the terms and conditions of her probation, as evidenced by her guilty plea to possession of methamphetamine in a later case while she was on probation in the prior case, and the fact that the revocation petition was nolle prossed was of no consequence in answering that question. The fact that the form order sealing defendant's prior case contained similar language was not dispositive in light of her guilty plea in the later case and the lengthy order denying dismissal of the prior case entered by the circuit court just minutes after the order sealing the prior case was entered. Robinette v. State, 2021 Ark. App. 48, 617 S.W.3d 304 (2021).

16-93-305. Probation — Sex offender may not reside with minor victim.

(a) If a person enters a plea of guilty or nolo contendere to or is found guilty of a sexual offense under § 5-14-101 et seq. or incest, § 5-26-202, perpetrated against a minor and is otherwise eligible for probation, the

person is prohibited as a condition of his or her probation from residing in a residence with any minor unless the court makes a specific finding that the person poses no danger to a minor residing in the residence.

(b) Upon violation of this condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

History. Acts 1997, No. 1188, § 1; 2011, No. 570, § 90; 2021, No. 499, § 1.

Amendments. The 2021 amendment deleted "First time offenders" following "Probation" in the section heading; and rewrote (a).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Conditions of Probation or Supervised Release Prohibiting Contact with Minors or Frequenting Places Where Minors Congregate — State Cases. 4 A.L.R.7th Art. 3 (2015).

16-93-306. Probation generally — Supervision.

(a)(1) The Director of the Division of Community Correction with the advice of the Board of Corrections shall establish written policies and procedures governing the supervision of probationers designed to enhance public safety and to assist the probationers in integrating into society.

(2)(A) The supervision of probationers shall be based on evidence-based practices, including a validated risk-needs assessment.

(B) Decisions shall target the probationer's criminal risk factors with appropriate supervision and treatment.

(3) The Division of Community Correction shall assume supervisory responsibilities over a probationer when the circuit court pronounces the probationer's sentence in the courtroom or upon the entry of a sentencing order, whichever occurs first.

(b) A probation officer shall:

(1) Investigate all cases referred to him or her by the director, the sentencing judge, or the prosecuting attorney;

(2) Furnish to each probationer under his or her supervision a written statement of the conditions of probation and instruct the probationer that he or she is required to stay in compliance with the conditions of probation or risk revocation under § 16-93-308;

(3) Develop a case plan for each individual who is assessed as a moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the probationer's conduct and condition through visitation, required reporting, or other methods, and report to the sentencing court of that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a probationer to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the probationer, including without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial screening and, if necessary, a comprehensive assessment.

(C) The results of the risk-needs assessment shall assist in making decisions that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(7) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

(c)(1) The Division of Community Correction shall allocate resources, including the assignment of probation officers, to focus on moderate-risk and high-risk offenders as determined by the actuarial assessment provided in subdivision (b)(6) of this section.

(2) The Division of Community Correction shall require public and private treatment and service providers that receive state funds for the treatment of or service for probationers to use evidence-based programs and practices.

(d)(1) The Division of Community Correction shall have the authority to sanction probationers administratively without utilizing the revocation process under § 16-93-307.

(2)(A) The Division of Community Correction shall develop an intermediate sanctions procedure and grid to guide a probation officer in determining the appropriate response to a violation of conditions of supervision.

(B) Intermediate sanctions administered by the Division of Community Correction are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening and or treatment;

(D) Increased monitoring, including electronic monitoring and home confinement; and

(E)(i) Incarceration in a county jail for no more than seven (7) days or incarceration in a Division of Community Correction or Division of Correction facility for no more than one hundred eighty (180) days.

(ii)*(a)* Incarceration as an intermediate sanction shall not be used more than six (6) times with an individual probationer.

(b) A probationer shall accumulate no more than thirty (30) days' incarceration in a county jail or no more than three hundred sixty (360) days' incarceration in a Division of Community Correction or Division of Correction facility as an intermediate sanction before the probation officer recommends a violation of the person's probation under § 16-93-307.

(c) A probationer is subject to a period of incarceration of:

(1) Up to ninety (90) days in a Division of Community Correction or Division of Correction facility for a technical conditions violation; and

(2) Exactly one hundred eighty (180) days in a Division of Community Correction or Division of Correction facility for a serious conditions violation.

(d) A probationer may not be incarcerated more than two (2) times as a probation sanction in a Division of Community Correction or Division of Correction facility.

(4) The Division of Community Correction shall notify the prosecuting attorney in writing when a probationer has been incarcerated due to an administrative sanction under this subsection and shall include an explanation of the cause for incarceration as well as the result of the sanction, if applicable.

(e) Any time in custody for which the probationer is held before a period of incarceration under this section is administered shall not count as a period of incarceration ordered under subdivision (d)(3)(E)(ii)*(a)* of this section or toward the total accumulation of days of incarceration as set forth in subdivision (d)(3)(E)(ii)*(b)* of this section.

(f) A sanction under this section is not available to a person serving a suspended imposition of sentence.

(g) A period of incarceration under this section:

(1) May be reduced by the Division of Correction or the Division of Community Correction for good behavior and successful program completion; and

(2) Shall not be reduced under this section for more than fifty percent (50%) of the total time of incarceration ordered to be served.

(h)(1)(A) A probationer subject to an administrative probation sanction under subsection (d) of this section does not have the right to an attorney at the administrative probation sanction but may elect instead to have a probation sanction heard in circuit court as provided in this subchapter and in which he or she has the right to an attorney.

(B) This subsection does not prohibit a probationer from conferring with a privately retained attorney during the administrative probation sanction process.

(2)(A) The Division of Community Correction shall inform the probationer who is subject to a probation sanction under this section in writing that he or she may elect to have the probation sanction heard in circuit court.

(B) If the probationer elects to have his or her probation sanction heard in circuit court, the Division of Community Correction shall notify the prosecuting attorney and cause a petition to hear the probation sanction to be filed in the circuit court within ten (10) days of the election.

History. Acts 2011, No. 570, § 90; 2017, No. 423, § 17; 2019, No. 248, § 2.

Amendments. The 2017 amendment substituted "is required to" for "must" in (b)(2); substituted "Department of Community Correction" for "department" in (c)(2), (d)(1), (d)(2)(A), and (d)(2)(B); added "or incarceration in a Department of Community Correction or Department of Correction facility for no more than one hundred eighty (180) days" in (d)(3)(E)(i); rewrote former (d)(3)(E)(ii) and redesig-

nated it as (d)(3)(E)(ii)*(a)* and *(b)*; and added (d)(3)(E)(ii)*(c)* and *(d)*, (d)(4), and (e) through (h).

The 2019 amendment added (a)(3).

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

CASE NOTES

Cited: Tomes v. State, 2019 Ark. App. 267, 577 S.W.3d 21 (2019).

16-93-307. Probation generally — Revocation hearings.

CASE NOTES

Analysis

Notice Sufficient.
Preliminary Hearing.
Right to Confront Witnesses.

Notice Sufficient.

Defendant's argument that the petition for revocation failed for lack of personal service was rejected where it was undisputed that defendant and his counsel had actual notice of the time and place of the probation revocation hearing, a plain reading of this section indicated that it required only prior written notice, and defendant admitted that he had received notice. Brown v. State, 2016 Ark. App. 403, 500 S.W.3d 781 (2016).

Defendant's argument that the allegations in the revocation petition were too vague was rejected as the petition specifically alleged, inter alia, that defendant had committed battery and arson, possessed a knife, and failed to pay his fines or report to his probation officer. Brown v. State, 2016 Ark. App. 403, 500 S.W.3d 781 (2016).

Preliminary Hearing.

Circuit court did not abuse its discretion by denying defendant's motion to dismiss the revocation of his probation because defendant waived his right to have a preliminary hearing since he never requested a preliminary hearing but filed a motion to dismiss over a year after his arrest; defendant failed to show how the delay, which the circuit court determined was caused by his repeated requests for continuances, prejudiced him. Hart v. State, 2017 Ark. App. 434, 530 S.W.3d 366 (2017).

Right to Confront Witnesses.

By allowing two police officers to testify that a confidential informant had identified appellant as the person who had delivered a controlled substance when the informant did not testify at the revocation hearing, and by denying appellant's confrontation-clause objections without explaining the basis for its ruling, the circuit court violated the confrontation clause. The confrontation-clause error was not harmless. Brisher v. State, 2016 Ark. App. 488, 505 S.W.3d 223 (2016).

Trial court violated the Confrontation Clause by allowing a police officer to testify in a probation revocation hearing about the reason defendant had been discharged from a treatment program where the State offered no explanation for why the director of the facility was not available to be confronted, and the trial court did not make a good-cause finding for not allowing confrontation. Nelson v. State, 2018 Ark. App. 324, 551 S.W.3d 417 (2018).

Trial court's Sixth Amendment error in allowing a police officer to testify about defendant's discharge from a treatment program rather than confronting the director of the program was harmless where it found defendant and his explanation concerning his discharge incredible, and defendant admitted that his discharge from the treatment program violated the terms of his probation. Nelson v. State, 2018 Ark. App. 324, 551 S.W.3d 417 (2018).

Defendant's right to confrontation was not violated at the hearing to revoke defendant's suspended sentence; although the jailer whom defendant was accused of having assaulted did not testify, a video of

the attack was shown and defendant was allowed to confront and cross-examine all of the witnesses who testified at the hearing. Furthermore, no hearsay evidence was offered. Caldwell v. State, 2018 Ark. App. 588, 565 S.W.3d 539 (2018).

At the probation revocation heading, once defendant invoked his confrontation rights regarding a police officer's notes, precedent required that the circuit court enforce those rights absent a specific finding of good cause, but the circuit court did not make a good cause finding. Thus, the Confrontation Clause was violated, and the error was not harmless. Pope v. State, 2020 Ark. App. 413, 607 S.W.3d 512 (2020).

Cited: Parmer v. State, 2017 Ark. App. 5 (2017).

16-93-308. Probation generally — Revocation — Definition.

(a)(1) At any time before the expiration of a period of suspension of sentence or probation, a court may summon a defendant on probation or who is serving a suspended imposition of sentence to appear before the court or may issue a warrant for the defendant's arrest.

(2) The warrant may be executed by any law enforcement officer.

(b)(1) At any time before the expiration of a period of suspension of sentence or probation, any law enforcement officer may arrest a defendant on probation or serving a suspended imposition of sentence without a warrant if the law enforcement officer has reasonable cause to believe that the defendant:

(A) Has failed to comply with a condition of his or her suspension of sentence or probation; or

(B) Is exhibiting behavior that can be construed to be a threat to:

(i) Abscond from supervision; or

(ii) Not comply with an intermediate sanction under § 16-93-306(d) or § 16-93-309(a)(4).

(2) If a defendant on probation is arrested by a probation officer employed by the Division of Community Correction for a violation of the defendant's probation and taken to a county jail for a reason listed under subdivision (b)(1)(B) of this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

(c)(1) A defendant arrested for violation of suspension of sentence or probation shall be taken immediately before the court that suspended imposition of sentence or, if the defendant was placed on probation, before the court supervising the probation, or, if the defendant is subject to administrative probation sanction under § 16-93-306(d), to the appropriate authority in the Division of Community Correction if practicable or, if transport to an appropriate authority of the Division of Community Correction is not practicable, then to the county jail.

(2) If a defendant subject to administrative probation sanction is transported to a county jail, then the county shall be reimbursed at the daily prevailing rate for the costs of incarceration.

(d) If a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his or her suspension of sentence or probation, the court may revoke the suspension of sentence or probation at any time prior to the expiration of the period of suspension of sentence or probation.

(e) A finding of failure to comply with a condition of suspension of sentence or probation as provided in subsection (d) of this section may be punished as contempt under § 16-10-108.

(f) A court may revoke a suspension of sentence or probation subsequent to the expiration of the period of suspension of sentence or probation if before expiration of the period:

(1) The defendant is arrested for violation of suspension of sentence or probation;

(2) A warrant is issued for the defendant's arrest for violation of suspension of sentence or probation;

(3) A petition to revoke the defendant's suspension of sentence or probation has been filed if a warrant is issued for the defendant's arrest within thirty (30) days of the date of filing the petition; or

(4) The defendant has been:

(A) Issued a citation in lieu of arrest under Rule 5 of the Arkansas Rules of Criminal Procedure for violation of suspension of sentence or probation; or

(B) Served a summons under Rule 6 of the Arkansas Rules of Criminal Procedure for violation of suspension of sentence or probation.

(g)(1)(A) If a court revokes a defendant's suspension of sentence or probation, the court may enter a judgment of conviction and may impose any sentence on the defendant that might have been imposed originally for the offense of which he or she was found guilty.

(B) However, any sentence to pay a fine or of imprisonment, when combined with any previous fine or imprisonment imposed for the same offense, shall not exceed the limits of § 5-4-201 or § 5-4-401, or if applicable, § 5-4-501.

(2)(A) As used in this subsection, "any sentence" includes the extension of a period of suspension of sentence or probation.

(B) If an extension of suspension of sentence or probation is made upon revocation, the court is not deprived of the ability to revoke the suspension of sentence or probation again if the defendant's conduct again warrants revocation.

(h)(1) A court shall not revoke a suspension of sentence or probation because of a person's inability to achieve a high school diploma, high school equivalency diploma approved by the Adult Education Section, or gainful employment.

(2)(A) However, the court may revoke a suspension of sentence or probation if the person fails to make a good faith effort to achieve a high school diploma, high school equivalency diploma approved by the Adult Education Section, or gainful employment.

(B) As used in this section, "good faith effort" means a person:

(i) Has been enrolled in a program of instruction leading to a high school diploma or a high school equivalency diploma approved by the Adult Education Section and is attending a school or an adult education course; or

(ii) Is registered for employment and enrolled and participating in an employment-training program with the purpose of obtaining gainful employment.

(i)(1)(A) Except as provided for in subdivision (i)(2) of this section, if a defendant on probation is subject to a revocation hearing under this subchapter or an administrative probation sanction for a technical conditions violation or a serious conditions violation, the defendant on probation is subject to confinement according to the time periods set out in § 16-93-306(d) and § 16-93-309(a)(4) without having his or her probation revoked.

(B)(i) A defendant on probation is subject to having his or her probation revoked and being sentenced to the Division of Correction or the Division of Community Correction for a subsequent violation of his or her probation if the defendant has been confined six (6) times under § 16-93-306(d).

(ii) After a defendant on probation has been confined two (2) times under either § 16-93-306(d) or § 16-93-309(a)(4) for any combination of a technical conditions violation or serious conditions violation for any period of time, the defendant on probation is subject to having his or her probation revoked and being sentenced to the Division of Correction or the Division of Community Correction for a subsequent violation of his or her probation.

(2)(A) A defendant is subject to having his or her probation revoked under this section for a technical conditions violation or a serious conditions violation without having been sanctioned for a period of confinement set out under § 16-93-306(d) or § 16-93-309(a)(4) if upon the filing of a petition in the court with jurisdiction the Division of Community Correction or the prosecuting attorney proves by a preponderance of the evidence that the defendant is engaging in or has engaged in behavior that poses a threat to the community.

(B) If a prosecuting attorney alleges a technical conditions violation or a serious conditions violation under subdivision (i)(2)(A) of this section and meets the standard established under subdivision (i)(2)(A) of this section, the court may revoke the defendant's probation and sentence him or her to a period of time exceeding the time periods set out under § 16-93-306(d) or § 16-93-309(a)(4).

(3) A period of confinement that a defendant on probation serves for a probation violation but before being administratively sanctioned or sanctioned by the circuit court shall not count as a period of confinement for the purposes of the aggregate number of periods of confinement under this subsection or under § 16-93-306(d)(3)(E)(ii)*(a)*, nor shall the number of days of confinement count toward the total accumulation of days of confinement as set forth in § 16-93-306(d)(3)(E)(ii)*(b)*.

(j) To the extent that a participant in a specialty court program is subject to this section, any period of confinement ordered by the specialty court is not subject to the accumulation of sanctions under subsection (i) of this section, nor is a specialty court program bound by the time periods under § 16-93-306(d) or § 16-93-309(a)(4).

History. Acts 2011, No. 570, § 90; 2015, No. 1115, § 25; 2017, No. 423, § 18; 2019, No. 910, §§ 897-903.

Amendments. The 2017 amendment inserted "of sentence" following "suspension" throughout (a) through (g); inserted "on probation or who is serving a suspended imposition of sentence" in (a)(1); redesignated former (b) as the introductory language of (b)(1) and (b)(1)(A); inserted "on probation or serving a suspended imposition of sentence" in the introductory language of (b)(1); added (b)(1)(B) and (b)(2); redesignated former (c) as (c)(1); added the language beginning with "or, if the defendant is subject" in (c)(1); added (c)(2); added (i) and (j); and made stylistic changes.

The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" throughout the section; substituted "Adult Education Section of the Division of Workforce Services" for "Department of Career Education" throughout (h); and substituted "Division of Correction" for "Department of Correction" in (i)(1)(B)(i) and (i)(1)(B)(ii).

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

CASE NOTES

Analysis

Cause for Revocation.

Even if defendant's motivations for moving to Texas were good, the conditions of his probation did not allow him to unilaterally relocate to Texas. Even though defendant offered his reasons for moving, he offered no reasonable justification for failing to get written permission to do so from his probation officer. Perry v. State, 2018 Ark. App. 312, 550 S.W.3d 907 (2018).

Competency.

There was no evidence to suggest incompetency other than the fact that defendant rambled, had an unusual speech pattern, and testified to irrelevant matters, which was insufficient to require the trial court to sua sponte halt the proceedings and order a competency evaluation. Thus, defendant could not avail himself of the exception to the rule that a court would not address arguments raised for the first time on appeal, and as he failed to raise the issue below, and the trial court was not obligated to raise it sua sponte, the revocation of probation was affirmed. Lewis v. State, 2016 Ark. App. 503, 505 S.W.3d 725 (2016).

Hearings.

Circuit court did not abuse its discretion by denying defendant's motion to dismiss the revocation of his probation because defendant waived his right to have a preliminary hearing since he never requested a preliminary hearing but filed a motion to dismiss over a year after his arrest; defendant failed to show how the delay, which the circuit court determined was caused by his repeated requests for continuances, prejudiced him. Hart v. State, 2017 Ark. App. 434, 530 S.W.3d 366 (2017).

Jurisdiction.

Trial court erred in sentencing defendant pursuant to a probation revocation that involved two cases; while defendant was arrested for a violation of probation prior to the expiration of the probation period, the trial court lost jurisdiction to revoke defendant's probation based on subsection (f) of this section without entry of a sentencing order or an order extending defendant's probation, despite defen-

dant's plea of guilty, where defendant was not arrested nor was an arrest warrant issued pursuant to one of the case numbers. Trif v. State, 2016 Ark. App. 452, 503 S.W.3d 802 (2016).

Circuit court lost jurisdiction to revoke defendant's probation for third-degree escape and public-intoxication charges upon the expiration of the probationary period. Rowton v. State, 2020 Ark. App. 174, 598 S.W.3d 522 (2020).

Procedure.

In a probation revocation case, the trial court did not err in denying defendant's motion to dismiss based on an allegedly invalid arrest warrant where her three-year probationary period began on March 28, 2018, the arrest warrant was issued on April 9, 2018, and was served on April 10, 2019, and thus the service of the arrest warrant was clearly within the three-year probation period and in compliance with subsection (d) of this section. Butry-Weston v. State, 2021 Ark. App. 51, 616 S.W.3d 685 (2021).

Review.

In a probation revocation case, the appellate court did not need to reach the merits of defendant's argument that she did not willfully fail to pay as ordered because she failed to challenge the other two bases for the revocation that she failed to report to her probation officer and committed criminal mischief when she damaged another individual's vehicle. Williams v. State, 2016 Ark. App. 601, 509 S.W.3d 677 (2016).

Order revoking appellant's suspended imposition of sentence was upheld, where there was nothing before the appellate court showing appellant's release date on his initial charge. With no evidence of appellant's date of release, there was no evidence of error. Cooper v. State, 2018 Ark. App. 580, 565 S.W.3d 130 (2018).

Revocation Improper.

Insufficient evidence supported the trial court's conclusion that defendant violated his conditions of probation where nothing in his probation conditions required him to move to a different, more stable residence if requested by his probation officer, and being charged with aggravated robbery in another county did not show that he had actually committed that crime. Baney v. State, 2017 Ark. App. 20, 510 S.W.3d 799 (2017).

While there was sufficient evidence to support the new convictions, the circuit court's order was illegal on its face regarding the theft of property misdemeanor where the 12-month sentence for the misdemeanor was completed before the State even filed its first petition to revoke defendant's suspended sentence. Payne v. State, 2017 Ark. App. 265, 520 S.W.3d 699 (2017).

Trial court erred in denying defendant's motion to dismiss the State's petition to revoke her probation, because the State did not present evidence at the revocation hearing to support that defendant was guilty of a misdemeanor other than the docket sheet showing the guilty plea and the docket sheet was silent on whether defendant was represented by counsel when she pleaded guilty in the district court. King v. State, 2018 Ark. App. 278, 549 S.W.3d 407 (2018).

Because defendant's conviction for residential burglary was not supported by the evidence, as the trial court found that defendant committed a crime with which he was not charged, and that conviction was used for the revocation of the suspended imposition of sentence, the revocation was reversed. Williams v. State, 2018 Ark. App. 349, 553 S.W.3d 753 (2018).

Revocation of probation as to defendant's misdemeanor theft-of-property charge was reversed where she had already served her sentence as to that charge. Vangilder v. State, 2018 Ark. App. 385, 555 S.W.3d 413 (2018).

Circuit court erred by denying defendant's motion to dismiss the petition to revoke his probation as the evidence was insufficient to show that he committed a driving while intoxicated (DWI) offense and thus violated his probation because the record was devoid of any evidence of defendant's alleged DWI offense; the docket sheet was never admitted into evidence, and the probation officer had no knowledge of the facts giving rise to the conviction and merely testified that defendant had been convicted. Boyd v. State, 2019 Ark. App. 363, 583 S.W.3d 406 (2019).

Conditions of probation from 2012 did not apply to defendant in the revocation of probation proceeding because those conditions were superseded by the entry of the

2017 sentencing order, which had no conditions attached to it and did not expressly state that the 2012 conditions of probation applied to defendant. Because the 2012 conditions did not apply to defendant, the circuit court clearly erred when it revoked defendant's probation on its finding that he violated the 2012 condition to not commit a criminal offense. Torres v. State, 2020 Ark. App. 370, 607 S.W.3d 503 (2020).

Revocation Proper.

Evidence was sufficient to sustain the revocation of defendant's probation given the witness testimony that defendant possessed a knife and had stabbed the victim, and the probation officer's testimony that defendant had failed to report. Brown v. State, 2016 Ark. App. 403, 500 S.W.3d 781 (2016).

Trial court did not err in revoking defendant's probation because, at the revocation hearing, defendant's probation officer testified that the terms and conditions of defendant's probation had been explained to him and that he had appeared to understand them; the probation officer's testimony established that defendant had failed to report as directed; one of the conditions of his probation was that he refrain from the use or possession of any alcoholic beverage; and, even if defendant had tested positive for controlled substances due to prescribed pain medication, that did not explain why he also tested positive for alcohol. Kidwell v. State, 2017 Ark. App. 4, 511 S.W.3d 341 (2017).

Although defendant argued that the trial court impermissibly revoked his probation on the basis that he failed to register a change of address, which requirement applied to persons convicted of sex offenses, the record revealed that the trial court's displeasure with defendant's failure to register his new address was for sex-offender-registry and probation purposes and the trial court did not clearly err in revoking defendant's probation. Defendant informed the probation officer of his change in residence only after her visit to his grandmother's house, which he had listed as his address, and after the probation officer's request for an explanation from him; and defendant did not request prior approval, nor did he provide notice of his change in residence as soon as possible. Dunhoo v. State, 2018 Ark. App. 232, 547 S.W.3d 720 (2018).

Trial court did not clearly err in finding that defendant inexcusably violated a condition of probation that he not leave Arkansas without the written permission of his probation officer. Perry v. State, 2018 Ark. App. 312, 550 S.W.3d 907 (2018).

Defendant's probation was properly revoked because he failed to challenge the grounds for revocation based on his failure to report to his probation officer upon release from incarceration, failure to report changes of residence, and consumption of alcohol; although those unchallenged violations were enough to support the revocation, the circuit court's finding that defendant willfully violated the no-contact order involving his mother was not clearly against the preponderance of the evidence. Clark v. State, 2019 Ark. App. 362, 584 S.W.3d 680 (2019).

Revocation of probation upheld. Lamb v. State, 2019 Ark. App. 494, 588 S.W.3d 409 (2019).

Circuit court did not err by finding that defendant inexcusably violated the terms and conditions of her probation where the probation officer's unchallenged testimony showed that she failed to report as directed, she was found at the home of a felon on multiple occasions and was living there, failed to provide a change of address after being told to move, and failed to pay supervision fees. Turner v. State, 2019 Ark. App. 534, 590 S.W.3d 158 (2019).

Revocation of defendant's probation was appropriate because the State proved by a preponderance of the evidence that defendant inexcusably failed to comply with a condition of probation that she not drink or possess intoxicating or alcoholic beverages. Defendant's probation officer testified that defendant denied having consumed any alcohol, but tested positive for alcohol; the probation officer further testified that on a subsequent probation visit, defendant confessed to consuming alcohol. Rowton v. State, 2020 Ark. App. 174, 598 S.W.3d 522 (2020).

Revocation of probation upheld. Morgan v. State, 2020 Ark. App. 212, 599 S.W.3d 665 (2020).

Circuit court did not err in failing to find defendant's noncompliance with the conditions of her suspended sentence excusable due to her drug addiction and need

for rehabilitation; the State presented ample evidence of noncompliance, including defendant's methamphetamine possession and her failure to appear at hearings, report to jail after dismissal from a drug treatment program, and pay court-ordered monetary obligations. Honeycutt v. State, 2020 Ark. App. 449, 608 S.W.3d 631 (2020).

—Drug Use.

State proved defendant inexcusably violated probation by testing positive for marijuana; while defendant was not explicitly required to pass mandatory drug screens, (1) defendant was required to obey state and federal laws, and (2) a positive drug screen could be evidence defendant violated a probation condition to lead a law-abiding life. Stewart v. State, 2018 Ark. App. 306, 550 S.W.3d 916 (2018).

Trial court properly revoked defendant's probation where a preponderance of the evidence showed that he had failed multiple drug screens, thereby violating a term and condition of his probation. Hampton v. State, 2021 Ark. App. 75, 618 S.W.3d 178 (2021).

Although the circuit court erred by finding that defendant failed to complete a program that was a required condition of his probation when he was dismissed from the program for medical purposes, revocation of defendant's probation was nevertheless appropriate because the circuit court found that defendant violated the terms and conditions of probation by using illegal drugs; there was testimony that defendant tested positive for THC while on probation and failed to demonstrate that the violation was excusable. Sivils v. State, 2021 Ark. App. 198 (2021).

—Failure to Pay Fines, Costs, Fees.

Circuit court properly revoked defendant's probation because its finding that defendant's failure to pay fines was inexcusable was not clearly erroneous; defendant had sufficient disability income to cover the monthly payments but failed to make even one such payment. Holmes-Childers v. State, 2016 Ark. App. 464, 504 S.W.3d 645 (2016).

Circuit court did not abuse its discretion by denying defendant's motion to dismiss the revocation of his probation because the circuit court, as trier of fact, was entitled to assess defendant's explanation for his failure to pay court-ordered fines and conclude that his nonpayment was inexcusable; the circuit court's finding was not clearly against the preponderance of the evidence Hart v. State, 2017 Ark. App. 434, 530 S.W.3d 366 (2017).

Circuit court properly revoked defendant's suspended imposition of sentence because defendant did not present a reasonable excuse regarding his nonpayment of fines and costs. London v. State, 2017 Ark. App. 585, 534 S.W.3d 758 (2017).

Defendant's claim that the State did not prove defendant's failure to pay fines, costs, and fees was inexcusable failed because defendant offered no testimony or evidence of defendant's inability to pay. Stewart v. State, 2018 Ark. App. 306, 550 S.W.3d 916 (2018).

Circuit court, which revoked appellant's suspended sentence, did not clearly err in finding that the State proved by a preponderance of the evidence that appellant inexcusably failed to pay restitution, fines, fees, and costs. The case profiles showed that appellant had made no payments for restitution, fines, fees, and costs, and when the State introduced the documents, appellant did not object to their admissibility. Keyes v. State, 2019 Ark. App. 202, 575 S.W.3d 166 (2019).

Defendant's probation was properly revoked because the State introduced testimony that defendant had not paid fines, fees, and costs as directed; once the State established a record of nonpayment, defendant had the burden of demonstrating an inability to pay or some reasonable excuse for his failure to pay; defendant acknowledged that he had been employed at times during the term of his probation; and the circuit court, as the trier of fact, was entitled to assess defendant's explanation for his failure to pay and conclude that his nonpayment was not excusable. Straub v. State, 2019 Ark. App. 302, 577 S.W.3d 776 (2019).

Circuit court did not err in finding that defendant had violated the conditions of her probation by not making the required payments because the person responsible for collecting payment of fines and fees for the county sheriff's office testified that defendant had made only one payment toward her fines and had a current outstanding balance, and an officer testified that she owed supervision fees; the circuit

court was entitled to find that defendant's nonpayment was inexcusable. Welch v. State, 2021 Ark. App. 216 (2021).

—Failure to Pay Restitution.

Circuit court's decision to revoke defendant's probation was not clearly against the preponderance of the evidence due to defendant's failure to pay monthly restitution as ordered; the State showed the nonpayment was willful based on evidence defendant's disability income exceeded her expenses, which included nonessential items, including cable television. Young v. State, 2019 Ark. App. 580, 591 S.W.3d 385 (2019).

—Failure to Report.

Circuit court properly revoked defendant's probation because defendant failed to make a good-faith effort to comply with the terms and conditions of her probation; defendant's failure to report was inexcusable because she could have overcome the obstacle by putting forth even a modicum of effort to look up the phone number. Holmes-Childers v. State, 2016 Ark. App. 464, 504 S.W.3d 645 (2016).

State proved defendant's failure to report to a probation officer was inexcusable because the State showed defendant failed to comply, requiring defendant to then show the noncompliance was excusable, which defendant did not; while defendant's mother offered excuses for the failure to report, the mother also testified defendant "chose" not to go. Stewart v. State, 2018 Ark. App. 306, 550 S.W.3d 916 (2018).

Trial court's finding that defendant violated the terms and condition of her probation by failing to report was affirmed where the probation officer testified that defendant had been informed of the reporting requirement, failed to report at least twice, and despite phone calls and a home visit, defendant made no contact with the probation office. Vangilder v. State, 2018 Ark. App. 385, 555 S.W.3d 413 (2018).

Revocation of probation upheld for failure to report. Thompson v. State, 2019 Ark. App. 421, 586 S.W.3d 682 (2019).

Revocation of defendant's probation was appropriate for failure to report to his probation officer for over three years. Johnson v. State, 2021 Ark. App. 226 (2021).

—New Offenses.

Trial court did not clearly err in granting the State's petition to revoke defendant's suspended imposition of sentence and in sentencing him to 144 months based on its finding by a preponderance of the evidence that defendant committed the crimes of false imprisonment, assault, possession of a firearm as a felon, and battery in the third degree; the victims testified that they were met outside a house by a man and were brought inside, where they were held while defendant—armed with a silver and black automatic gun—asked who was responsible for a burglary of his stuff; and defendant hit, slapped, and kicked one of the victims. Mosley v. State, 2016 Ark. App. 353, 499 S.W.3d 226 (2016).

Trial court's decision to revoke defendant's suspended imposition of sentence based on his participation in the robbery was not against a preponderance of the evidence, which showed that defendant actively participated in the robbery by driving his SUV while his passengers discussed, planned, and committed the robbery of the victim in the SUV, he was still driving when the victim was kicked out on the side of the road, and he joined in divvying up the stolen cash and smoking the marijuana taken. Collins v. State, 2018 Ark. App. 563, 566 S.W.3d 139 (2018).

Uncorroborated testimony of defendant's alleged accomplice in a murder was a sufficient basis for the revocation of defendant's probation. Furthermore, the revocation did not have to be deferred until after the new murder charge was adjudicated; even if defendant was acquitted in the criminal trial, defendant's probation could still be revoked. Clark v. State, 2019 Ark. App. 158, 573 S.W.3d 551 (2019).

Revocation of defendant's probation was supported by evidence that she violated her probation conditions by committing theft, including a detective's testimony that defendant admitted she had taken the jewelry from the victim and sold it to a pawnshop. Tyler v. State, 2021 Ark. App. 23, 616 S.W.3d 663 (2021).

Right to Confront Witnesses.

Even assuming any Confrontation Clause error in the probation officer testifying to information gained from former

probation officers, the error would be harmless because there was sufficient other evidence to support revoking defendant's suspended imposition of sentence for failing to remain on good behavior and committing new offenses. Gilbreth v. State, 2020 Ark. App. 86, 596 S.W.3d 29 (2020).

Sentence After Revocation.

Because appellant was not determined to be a habitual offender when his plea was accepted and he was placed on suspended imposition of sentence (SIS), he could not be sentenced as a habitual offender on revocation of that SIS. Appellant's 20-year sentence on revocation did not exceed the nonhabitual range for Class B felonies, but the sentencing order erroneously reflected that he was sentenced as a habitual offender and the case was remanded in part for entry of a corrected sentencing order. Robertson v. State, 2016 Ark. App. 379, 499 S.W.3d 247 (2016).

In a no-merit appeal, revocation of defendant's probation was affirmed; the four-year sentence with a judicial transfer to the regional punishment facility was less than the 10-year maximum sentence for a Class C felony, and was permissible. Parmer v. State, 2017 Ark. App. 5 (2017).

In a probation revocation case, defendant's original sentence on a Class A misdemeanor was remanded for correction, because (1) the sentence was illegal on its face, as defendant was sentenced to both 20 days in jail and 12 months' probation and, contrary to § 5-4-304(a), the original sentencing order did not show that the 20 days' confinement was a condition of defendant's probation; and (2) the trial court failed to give defendant credit for the 20 days he was ordered to serve in the original order. Thompson v. State, 2017 Ark. App. 158, 516 S.W.3d 297 (2017).

When the trial court found defendant had violated the conditions of his suspended imposition of sentence by having a firearm in his possession, the trial court did not err in sentencing him to the Department of Correction for 10 years for the underlying offense of hindering apprehension or prosecution, a Class B felony that carried a 20-year maximum; the original sentence he received was 10 years in the Department of Correction, followed by 10 years' suspended imposition of sentence with jail-time credit for 554 days. Defendant's jail-time-credit argument did not involve the imposition of an illegal sentence and was not one that could be raised for the first time on appeal. Easley v. State, 2017 Ark. App. 317, 524 S.W.3d 412 (2017).

Defendant's 12-year sentence on revocation of probation was not illegal where the sentence was within the sentencing range for Class B felony arson. Taylor v. State, 2018 Ark. App. 30, 540 S.W.3d 295 (2018) (no-merit-appeal) (decided under former § 5-4-309).

Trial court did not abuse its discretion in imposing a one-year jail sentence following revocation of appellant's probation for repeated positive drug and alcohol tests; appellant had been placed on probation for the Class A misdemeanor offenses of negligent homicide and two counts of third-degree battery, and Class A misdemeanors carried a maximum one-year jail term. Talbert v. State, 2018 Ark. App. 412, 558 S.W.3d 396 (2018).

After revoking defendant's probation, the circuit court did not abuse its discretion by sentencing defendant to 10 years' imprisonment for second-degree domestic battery, six years' imprisonment for one count of aggravated assault on a family member, four years' imprisonment followed by two years' suspended imposition of sentence (SIS) for one count of aggravated assault on a family member, and six years' SIS for first-degree terroristic threatening, and in ordering the sentences to run consecutively, except the six years' SIS for first-degree terroristic threatening, which was to run concurrent to the second-degree battery sentence, because the sentences imposed by the circuit court were within the statutory range prescribed by law. The circuit court had been repeatedly lenient with defendant and warned him of the potential consequences of violating the no-contact order concerning his mother. Clark v. State, 2019 Ark. App. 362, 584 S.W.3d 680 (2019).

Circuit court did not err in sentencing defendant after revoking his probation because the court considered evidence only from the revocation hearing and did not consider evidence from defendant's prior hearing. Neal v. State, 2019 Ark. App. 489, 588 S.W.3d 759 (2019).

Imposing a five-year sentence rather than rehabilitation was not error where the court heard and considered defendant's request for additional rehabilitation but rejected it, and in its oral ruling specifically noted that defendant had been discharged from two separate treatment programs during the pendency of the revocation proceedings and questioned whether any additional efforts at rehabilitation at the time would have been fruitful. Honeycutt v. State, 2020 Ark. App. 449, 608 S.W.3d 631 (2020).

Sufficiency of the Evidence.

—Evidence Sufficient.

Revocation of appellant's suspended sentence was not clearly against the preponderance of the evidence where a witness had testified that the pills appellant sold to her in the video were the ones she turned over to the police. Robertson v. State, 2016 Ark. App. 379, 499 S.W.3d 247 (2016).

Evidence was sufficient to revoke defendant's suspended imposition of sentence (SIS) because, on July 22, 2015, defendant and his ex-girlfriend argued and she told defendant that they needed a break; defendant went back to the ex-girlfriend's house later and assaulted her; the July 22 allegations against defendant were for assault on a family or household member and second-degree domestic battery; the ex-girlfriend suffered broken teeth, a broken nose, and a black eye; and defendant failed to raise objections to the State's failure to enter into evidence the actual SIS document or the failure to ask the trial court to take judicial notice of the original order placing him on SIS, precluding consideration of those issues on appeal. Baker v. State, 2016 Ark. App. 468 (2016).

16-93-309. Probation generally — Revocation hearing — Sentence alternatives — Sanctions.

(a) Following a revocation hearing held under § 16-93-307 and in which a defendant on probation or who is serving a suspended imposition of sentence has been found guilty or has entered a plea of guilty or nolo contendere, the court may:

(1) Continue the period of suspension of sentence or continue the period of probation;

(2) Lengthen the period of suspension of sentence or the period of probation within the limits set by § 5-4-306;

(3) Increase the fine within the limits set by § 5-4-201;

(4)(A) Impose a period of confinement to be served during the period of suspension of sentence or period of probation.

(B)(i) A period of confinement ordered under subdivision (a)(4)(A) of this section resulting from a technical conditions violation or serious conditions violation of probation shall be for the following periods, subject to subsection (b) of this section and § 16-93-308(i)(2)(A), before the defendant on probation is released and returned to probation:

(a) Up to ninety (90) days' confinement for a technical conditions violation; and

(b) Exactly one hundred eighty (180) days' confinement for a serious conditions violation.

(ii) Any time in custody for which the defendant is held before a period of confinement is ordered by the court under subdivision (a)(4)(A) of this section shall not be credited to the overall period of confinement ordered under this subdivision (a)(4) or toward the maximum number of periods of confinement or the maximum number of days authorized under § 16-93-306(d)(3)(E).

(C) The periods of confinement under subdivision (a)(4)(B) of this section are not available to a person serving a suspended imposition of sentence; or

(5) Impose any conditions that could have been imposed upon conviction of the original offense.

(b)(1) A period of confinement under subdivision (a)(4) of this section may be reduced by the Division of Correction or the Division of Community Correction for good behavior and successful program completion.

(2) A period of confinement shall not be reduced under subdivision (a)(4) of this section for more than fifty percent (50%) of the total time of confinement ordered to be served.

(3) A period of confinement under subdivision (a)(4) of this section shall not be reduced by any time served by the defendant while he or she awaits a court hearing to challenge the imposition of the sanction.

(c)(1) If a defendant is in custody awaiting a hearing under this section for a technical conditions violation or a serious conditions violation, the hearing shall be conducted as soon as practicable but no later than thirty (30) business days from the date the defendant was taken into custody.

(2) If a defendant on probation is in custody in a county jail awaiting a hearing to challenge the imposition of a sanction under subdivision (a)(4) of this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

(d) Following a revocation hearing in which a defendant is ordered to continue on a period of suspension of sentence or a period of probation, upon finding the defendant guilty at a subsequent revocation hearing, the court may:

(1) Revoke the suspension of sentence or period of probation; and

(2) Sentence the defendant to incarceration in the Division of Correction.

(e) If the suspension of sentence or probation of a defendant is subsequently revoked and the defendant is sentenced to a term of imprisonment, any period of time actually spent in confinement due to the original revocation shall be credited against the subsequent sentence.

(f) The location of the appropriate confining facility in which a defendant serves a period of confinement for a technical conditions violation or a serious conditions violation shall be determined by the Board of Corrections.

(g) Noncompliance with program requirements approved by the board or violent or sexual behavior while confined for a technical conditions violation or serious conditions violation under this section may result in revocation of the defendant's probation for a period of time exceeding the limitations of subdivision (a)(4) of this section, up to and including the time remaining on the defendant's original sentence.

(h) To the extent that a participant in a specialty court program is subject to this section, any period of confinement ordered by the

specialty court is not subject to the periods of confinement required under subdivision (a)(4) of this section.

History. Acts 2011, No. 570, § 90; 2017, No. 423, § 19; 2019, No. 910, §§ 904, 905.

Amendments. The 2017 amendment added "Sanctions" in the section heading; inserted "on probation or who is serving a suspended imposition of sentence" in the introductory language of (a); deleted "of imposition" following "suspension" in (a)(1); inserted "of sentence" in (a)(2); redesignated former (a)(4) as (a)(4)(A); deleted "of imposition" following "suspension" in (a)(4)(A); added (a)(4)(B) and (C); inserted present (b) and (c), and redesignated former (b) and (c) as (d) and (e); rewrote (d); inserted "of sentence" following "suspension" in (e); and added (f) through (h).

The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (b)(1) and (d)(2); and substituted "Division of Community Correction" for "Department of Community Correction" in (b)(1).

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

CASE NOTES

Alternative Sanctions.

When revoking defendant's probation that had been imposed when he pled guilty to residential burglary, the circuit court did not commit reversible error in imposing a sentence of 12 years, which was within the five to twenty-year range for Class B felonies; under this section, the court was permitted to impose alternative sanctions but was not required to impose or consider alternative sanctions. Reno v. State, 2020 Ark. App. 403, 607 S.W.3d 184 (2020).

16-93-310. Probation generally — Revocation — Community correction program.

(a) When a person sentenced under a community correction program, § 5-4-312, violates any terms or conditions of his or her sentence or term of probation, revocation of the sentence or term of probation shall be consistent with the procedures under this subchapter.

(b) Upon revocation, the court of jurisdiction shall determine whether the offender shall remain under the jurisdiction of the court and be assigned to a more restrictive community correction program, facility, or institution for a period of time or committed to the Division of Community Correction.

(c)(1) If committed to the Division of Correction, the court shall specify if the commitment is for judicial transfer of the offender to the Division of Community Correction or is a regular commitment.

(2)(A) The court shall commit the eligible offender to the custody of the Division of Correction under this subchapter for judicial or administrative transfer to the Division of Community Correction subject to the following:

(i) That the sentence imposed provides that the offender shall serve no more than three (3) years of confinement, with credit for meritorious good time, with initial placement in a Division of Community Correction facility; and

(ii) That the initial placement in the Division of Community Correction is conditioned upon the offender's continuing eligibility for Division of Community Correction placement and the offender's compliance with all applicable rules established by the Board of Corrections for community correction programs.

(B) Post-prison supervision shall accompany and follow community correction programming when appropriate.

History. Acts 2011, No. 570, § 90; 2017, No. 423, § 20; 2019, No. 910, §§ 906, 907; 2021, No. 55, § 4.

Amendments. The 2017 amendment substituted "three (3) years" for "two (2) years" in (c)(2)(A)(i); deleted "and regulations" following "rules" in (c)(2)(A)(ii); and inserted "community correction" in (c)(2)(B).

The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" throughout the section.

The 2021 amendment inserted "or administrative" in the introductory language of (c)(2)(A).

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

Subchapter 6 — Parole — Eligibility

Effective Dates. Acts 2017, No. 539, § 14: Mar. 20, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that in light of recent United States Supreme Court decisions in Miller v. Alabama and Montgomery v. Louisiana, more than one hundred persons in Arkansas are entitled to relief under those decisions; and that this act is immediately necessary in order to make those persons eligible for parole in order to be in compliance with Montgomery v. Louisiana. Therefore, an emergency is declared to

exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 1029, § 5: Apr. 6, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Senate Bill 294 of 2017 recently became Acts 2017, No. 539, with an immediate effective date; that an internal citation in three (3) of the sections of the act was found to be incorrect; and that this act is immediately necessary because the three internal citations need to be corrected. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 946, § 2: Apr. 27, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas is in the top six states concerning the crime rate and violent crime rate as per the Federal Bureau of Investigation and National Incident-Based Reporting System; that the Arkansas Criminal Code is currently not equipped with an effective method to punish those persons who are convicted felons and are prohibited by law from possessing a firearm who decide to ignore the law and use a firearm to commit violent offenses; that law enforcement in Arkansas has had to use the offices of the United States Department of Justice and the United States district courts to prosecute crimes covered by this act in order to get commensurate sentences and length of incarceration; that this act eliminates parole for those bad actors and will serve as a more effective deterrent against further violent criminal acts; and that this act is immediately necessary because the safety of the public and the ability of law enforcement to establish the deterrent effect of this act needs to occur as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-93-601. Felonies committed prior to April 1, 1977.

(a) DEATH SENTENCE. An individual under sentence of death is not eligible for release on parole.

(b) LIFE IMPRISONMENT. (1) An individual sentenced to life imprisonment prior to March 1, 1968, and any individual sentenced to life imprisonment after February 12, 1969, and before April 1, 1977, is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency. When the life sentence is commuted to a term of years, the individual is eligible for release on parole after having served one-third (⅓) of the time to which the life sentence is commuted, with credit for good-time allowances.

(2) An individual sentenced to life imprisonment on and after March 1, 1968, and prior to February 12, 1969, is eligible for release on parole after he or she serves fifteen (15) years of the sentence, with credit for good-time allowances not to exceed five (5) years.

(c) SENTENCE OF YEARS. An individual sentenced to a term of years in the Department of Correction or the Division of Correction after February 11, 1976, and before April 1, 1977, is eligible for release on parole after he or she serves the following terms:

(1) An individual sentenced to a term of years for other than a Class Y felony who is confined in the department or division for the second time is eligible for release on parole after he or she serves one-third (⅓) of the time for which sentenced, with credit for good-time allowances, or one-third (⅓) of the time to which sentence is commuted by executive clemency, with credit for good-time allowances. However, a judge may require one-half (½) of the sentence as imposed, or one-half (½) of the sentence as commuted by executive clemency, to be served, with credit for good-time allowances; and

(2) An individual sentenced to a term of years who is confined in the department or division and who pleads guilty to or is convicted of a Class Y felony or who has previously been confined in the department or division two (2) or more times is eligible for release on parole after he or she serves one-half (½) of the time to which the sentence is commuted by executive clemency, with credit for good-time allowances.

(d) Notwithstanding the provisions of subsections (a)-(c) of this section, the court may require anyone convicted of a crime involving the use of a deadly weapon to serve one-half (½) of the time for which sentenced, with credit for good-time allowances.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 28; 1969, No. 48, § 1; 1969, No. 94, § 1; 1975, No. 378, § 6; 1975 (Extended Sess., 1976), No. 1157, § 1; 1975 (Extended Sess., 1976), No. 1161, § 1; 1981, No. 620, § 15; A.S.A. 1947, § 43-2807; reen. Acts 1987, No. 990, § 1; 2019, No. 910, § 908.

Amendments. The 2019 amendment inserted "or the Division of Correction" in the introductory language of (c); and inserted "or division" in (c)(1) and twice in (c)(2).

16-93-607. Parole eligibility — Felonies committed on or after April 1, 1983, but before January 1, 1994 — Definition.

(a) As used in this section, "felony" means a crime classified as Class Y felony, Class A felony, or Class B felony by the laws of this state.

(b) A person who committed a felony prior to April 1, 1983, and who was convicted and incarcerated for that felony, shall be eligible for release on parole in accordance with the parole eligibility law in effect at the time the crime was committed.

(c) A person who commits felonies on or after April 1, 1983, and who shall be convicted and incarcerated for that felony, shall be eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have his or her sentence commuted by the Governor, as provided by law. An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency. Upon commutation, the inmate is eligible for release on parole as provided in this section;

(2) An inmate classified as a first offender under § 16-93-606, except one under twenty-one (21) years of age as described in subsection (d) of this section and except one who pleads guilty or has been convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-third (⅓) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances. However, if the trier of fact determines that a deadly weapon was used in the commission of the crime, a first offender twenty-one (21) years of age or older is not eligible for release on parole until a minimum of one-half (½) of the sentence is served, with credit for good-time allowances;

(3) An inmate classified as a second offender under § 16-93-606 and one who pleads guilty or was convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, are not eligible for release on parole until a minimum of one-half (½) of his or her sentence shall have been served, with credit for good-time allowances, or one-half (½) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances;

(4) An inmate classified as a third offender under § 16-93-606, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of three-fourths (¾) of his or her sentence shall have been served, with credit for good-time allowances, or three-fourths (¾) of the time to which the sentence is commuted by executive clemency shall have been served, with credit for good-time allowances; and

(5) An inmate classified as a fourth offender under § 16-93-606, upon entering a correctional institution in this state under sentence

from a circuit court, is not eligible for parole, but he or she shall be entitled to good-time allowances as provided by law.

(d) Any person under twenty-one (21) years of age who is first convicted of a felony and committed to the first offender penal institution or to the Department of Correction, as the Division of Correction was known as prior to July 1, 2019, now known as the "Division of Correction", for a term of years is eligible for parole at any time unless a minimum time to be served is imposed consisting of not more than one-third (⅓) of the total time sentenced. In the event the individual is sentenced to a minimum time to be served, he or she is eligible for release on parole after serving the minimum time prescribed, with credit for good-time allowances, and for commutation by the exercise of executive clemency.

(e)(1) When any convicted felon, while on parole, is convicted of another felony, the felon is to be committed to the division to serve the remainder of his or her original sentence, including any portion suspended, with credit for good-time allowances. Upon conviction for the subsequent felony, the court shall require the sentence for the subsequent felony to be served consecutively with the sentence for the previous felony.

(2) Any person found guilty of a felony and placed on probation or suspended sentence therefor who is subsequently found guilty of another felony committed while on probation or suspended sentence is to be committed to the division to serve the remainder of his or her suspended sentence plus the sentence imposed for the subsequent felony. The sentence imposed for the subsequent felony is to be served consecutively with the remainder of the suspended sentence.

(f) For parole eligibility purposes, consecutive sentences by one (1) or more courts or for one (1) or more counts are to be considered as a single commitment reflecting the cumulative sentence to be served.

(g) Nothing in this section shall be construed to reduce, lessen, or in any manner take away or affect the good-time allowances earned by any individual prior to April 1, 1983.

History. Acts 1983, No. 825, §§ 1, 3; A.S.A. 1947, §§ 43-2830.1, 43-2830.3; Acts 2011, No. 570, § 94; 2019, No. 910, §§ 909, 910.

Amendments. The 2019 amendment inserted "as the Division of Correction was known as prior to July 1, 2019, now known as the Division of Correction" in (d); substituted "Division of Correction" for "Department of Correction" in (e)(1); and substituted "division" for "department" in (e)(2).

CASE NOTES

Liberty Interest.

Subdivision (c)(1) of this section, which gives the Governor discretion to grant clemency, does not create a liberty interest in parole eligibility. Arkansas statutes have not created a liberty interest in parole eligibility. Millsap v. Kelley, 2016 Ark. 406 (2016).

16-93-609. Effect of more than one conviction for certain felonies — Definition.

(a) Any person who commits murder in the first degree, § 5-10-102, rape, § 5-14-103, or aggravated robbery, § 5-12-103, subsequent to March 24, 1983, and who has previously been found guilty of or pleaded guilty or nolo contendere to murder in the first degree, § 5-10-102, rape, § 5-14-103, or aggravated robbery, § 5-12-103, shall not be eligible for release on parole by the Parole Board.

(b)(1) Any person who commits a violent felony offense or any felony sex offense subsequent to August 13, 2001, and who has previously been found guilty of or pleaded guilty or nolo contendere to any violent felony offense or any felony sex offense shall not be eligible for release on parole by the board.

(2) As used in this subsection, "a violent felony offense or any felony sex offense" means those offenses listed in § 5-4-501(d)(2).

(c) A person who commits the offense of possession of firearms by certain persons, § 5-73-103, in which the offense is under § 5-73-103(c)(1), after April 27, 2021, is not eligible for parole.

History. Acts 1983, No. 772, § 1; A.S.A. 1947, § 43-2807.1; Acts 2001, No. 1805, § 1; 2021, No. 946, § 1.

Amendments. The 2021 amendment added (c).

CASE NOTES

Analysis

Ineffective Assistance of Counsel.
—Prejudice Not Shown.
Instructions.

Ineffective Assistance of Counsel.

—Prejudice Not Shown.

Counsel's deficient performance in failing to correct instructional error that defendant was eligible for parole when he was not did not establish prejudice because the prosecutor emphasized the serious nature of the crime and the injury the petitioner inflicted on the mentally impaired victim and her family and the petitioner's seven prior felony convictions, and after deliberating less than 30 minutes, the jury imposed a sentence that would likely exceed his life span whether or not he would be granted parole. Stewart v. Kelley, 890 F.3d 1124 (8th Cir. 2018).

Instructions.

Trial court's erroneous instruction during the sentencing phase that defendant would be eligible for parole after serving 70% of his sentence for first-degree murder did not provide any relief to defendant, because he failed to object to the error when it occurred and the error did not fit within the third *Wicks* exception concerning certain flagrant and highly prejudicial errors. Muhammad v. State, 2019 Ark. App. 87, 572 S.W.3d 21 (2019).

16-93-610. Computation of sentence.

(a) Time served is deemed to begin on the day sentence is imposed, not on the day a prisoner is received by the Division of Correction. It shall continue only during the time in which a prisoner is actually confined in a county jail or other local place of lawful confinement or while under the custody and supervision of the division.

(b) When the sentencing judge imposes sentence, he or she is to direct that the time already served by the defendant in jail or other place of detention is to be credited against the defendant.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 34; A.S.A. 1947, § 43-2813; Acts 2005, No. 1994, § 440; 2019, No. 910, § 911; 2021, No. 475, § 21.

Amendments. The 2019 amendment substituted "Department of Corrections" for "Department of Correction" in the first sentence of (a).

The 2021 amendment, in (a), substituted "Division of Correction" for "Department of Corrections" and "division" for "department".

16-93-612. Parole eligibility — Date of offense.

(a) A person's parole eligibility shall be determined by the laws in effect at the time of the offense for which he or she is sentenced to the Division of Correction.

(b) For an offender serving a sentence for a felony committed before April 1, 1977, § 16-93-601 governs that person's parole eligibility.

(c) For an offender serving a sentence for a felony committed between April 1, 1977, and April 1, 1983, § 16-93-604 governs that person's parole eligibility.

(d) For an offender serving a sentence for a felony committed on or after April 1, 1983, but before January 1, 1994, § 16-93-607 governs that person's parole eligibility.

(e) For an offender serving a sentence for a felony committed on or after January 1, 1994, § 16-93-614 governs that person's parole eligibility, unless otherwise noted and except:

(1) If the felony is murder in the first degree, § 5-10-102, kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the offense occurred after July 28, 1995, § 16-93-618 governs that person's parole eligibility;

(2) If the felony is manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, or possession of drug paraphernalia with the intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the offense occurred after April 9, 1999, § 16-93-618 governs that person's parole eligibility;

(3) If the felony is battery in the second degree, § 5-13-202, aggravated assault, § 5-13-204, terroristic threatening, § 5-13-301, domestic battering in the second degree, § 5-26-304, or residential burglary, § 5-39-201(a), and the offense occurred on or after April 1, 2015, § 16-93-620 governs that person's parole eligibility; or

(4) If the felony was committed by a person who was a minor at the time of the offense, he or she was committed to the Department of Correction, or to the division, and the offense occurred before, on, or after March 20, 2017, § 16-93-621 governs that person's parole eligibility.

(f) For an offender serving a sentence for a felony committed on or after January 1, 1994, § 16-93-615 governs that person's parole eligibility procedures.

(g) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, if the felony is an offense that is subject to delayed release under § 5-4-405 and was committed on or after July 28, 2021, the person shall not be eligible for parole or community correction transfer until the person serves a minimum of eighty percent (80%) of the term of imprisonment to which the person is sentenced.

History. Acts 2011, No. 570, § 97; 2015, No. 895, § 24; 2017, No. 539, § 9; 2019, No. 910, §§ 912, 913; 2021, No. 681, § 5.

A.C.R.C. Notes. Acts 2017, No. 539, § 1, provided: "Title. This act shall be known and may be cited as the 'Fair Sentencing of Minors Act of 2017'."

Acts 2017, No. 539, § 2, provided: "Legislative intent.

"(a)(1) The General Assembly acknowledges and recognizes that minors are constitutionally different from adults and that these differences must be taken into account when minors are sentenced for adult crimes.

"(2) As the United States Supreme Court quoted in Miller v. Alabama, 132 S.Ct. 2455 (2012), 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior,' and 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,' including 'parts of the brain involved in behavior control'.

"(3) Minors are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.

"(4) The United States Supreme Court has emphasized through its cases in Miller, Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 560 U.S. 48 (2010), that 'the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes'.

"(5) Youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.

"(b) In the wake of these United States Supreme Court decisions and the emerging juvenile brain and behavioral development science, several states, including Texas, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky, Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut, Vermont, Massachussets, and the District of Columbia, have eliminated the sentence of life without parole for minors.

"(c) It is the intent of the General Assembly to eliminate life without parole as a sentencing option for minors and to create more age-appropriate sentencing standards in compliance with the United States Constitution for minors who commit serious crimes."

Amendments. The 2017 amendment added (e)(4).

The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a); and inserted "or to the Division of Correction" in (e)(4).

The 2021 amendment added (g).

16-93-613. Parole eligibility — Class Y, Class A, or Class B felonies.

(a) Except for those persons subject to delayed release under § 5-4-405, a person who commits a Class Y felony, Class A felony, or Class B felony, except those drug offenses addressed in § 16-93-618 or those Class Y felonies addressed in § 5-4-104(c)(2), § 16-93-614, or § 16-93-618, and who shall be convicted and incarcerated for that felony, shall be eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have his or her sentence commuted by the Governor as provided by law; and

(2)(A) An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency.

(B) Upon commutation, the inmate is eligible for release on parole as provided in this subchapter.

(b) For parole eligibility purposes, consecutive sentences by one (1) or more courts or for one (1) or more counts are to be considered as a single commitment reflecting the cumulative sentence to be served.

(c) Except as provided for under § 16-93-621, for an offense committed before, on, or after March 20, 2017, a person who was a minor at the time of committing an offense listed under subsection (a) of this section is eligible for release on parole under this section.

History. Acts 2011, No. 570, § 98; 2017, No. 539, § 10; 2017, No. 1029, § 1; 2021, No. 681, § 6; 2021, No. 1102, § 7.

A.C.R.C. Notes. Acts 2017, No. 539, § 1, provided: "Title. This act shall be known and may be cited as the 'Fair Sentencing of Minors Act of 2017'."

Acts 2017, No. 539, § 2, provided: "Legislative intent.

"(a)(1) The General Assembly acknowledges and recognizes that minors are constitutionally different from adults and that these differences must be taken into account when minors are sentenced for adult crimes.

"(2) As the United States Supreme Court quoted in Miller v. Alabama, 132 S.Ct. 2455 (2012), 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior,' and 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,' including 'parts of the brain involved in behavior control'.

"(3) Minors are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.

"(4) The United States Supreme Court has emphasized through its cases in Miller, Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 560 U.S. 48 (2010), that 'the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes'.

"(5) Youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.

"(b) In the wake of these United States Supreme Court decisions and the emerging juvenile brain and behavioral development science, several states, including Texas, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky, Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut, Vermont, Massachussets, and the District of Columbia, have eliminated the sentence of life without parole for minors.

"(c) It is the intent of the General Assembly to eliminate life without parole as a sentencing option for minors and to create more age-appropriate sentencing standards in compliance with the United States Constitution for minors who commit serious crimes."

Amendments. The 2017 amendment by No. 539 added (c).

The 2017 amendment by No. 1029 substituted "§ 16-93-621" for "§ 16-93-619" in (c).

The 2021 amendment by No. 681 added "Except for those persons subject to delayed release under § 5-4-405" in the introductory language of (a); and made a stylistic change.

The 2021 amendment by No. 1102 inserted "§ 5-4-104(c)(2)" in the introductory language of (a).

16-93-614. Parole eligibility — Offenses committed after January 1, 1994 — Definition.

(a) As used in this section and §§ 16-93-615 — 16-93-617, "felonies" means those crimes classified as Class Y felonies, Class A felonies, Class B felonies, Class C felonies, Class D felonies, or unclassified felonies by the laws of this state.

(b)(1) A person who committed a felony before January 1, 1994, and who was convicted and incarcerated for that felony shall be eligible for release on parole under this section and §§ 16-93-615 — 16-93-617 in accordance with the parole eligibility law in effect at the time the crime was committed.

(2) A person who committed a target offense under § 16-93-1201 et seq. before January 1, 1994, and who has not been sentenced to a term of incarceration may waive the right to be released under the parole eligibility law in effect at the time the crime was committed and shall become eligible for judicial or administrative transfer pursuant to the transfer provisions provided in subdivision (c)(2) of this section.

(3) A person who has committed a felony who is within a target group as currently defined under § 16-93-1202(10) and who is released on parole shall be eligible, pursuant to rules established by the Parole Board, for commitment to a community correction facility if he or she is found to be in violation of any of his or her parole conditions, unless the parole violation constitutes a nontarget felony offense.

(c) A person who commits a felony on or after January 1, 1994, and who shall be convicted and incarcerated for that felony shall be eligible for transfer to community correction as follows:

(1)(A) An inmate under sentence of death or life imprisonment without parole shall not be eligible for transfer, but may be pardoned or have his or her sentence commuted by the Governor as provided by law.

(B) An inmate sentenced to life imprisonment shall not be eligible for transfer unless his or her sentence is commuted to a term of years by executive clemency.

(C) Upon commutation, an inmate shall be eligible for transfer as provided in this section;

(2)(A)(i)*(a)* An offender convicted of a target offense under § 16-93-1201 et seq. may be committed to the Division of Correction and judicially or administratively transferred to the Division of Community Correction by provision in the commitment that the trial court order or authorize such a transfer.

(b) No other offender is eligible for transfer to a Division of Community Correction facility.

(ii) A copy of the commitment shall be forwarded immediately to the Division of Correction and to the Division of Community Correction.

(iii) In the event that an offender is sentenced to the Division of Correction without judicial or administrative transfer on one (1) sentence and concurrently sentenced to the Division of Correction with judicial or administrative transfer on another sentence, the offender shall remain in the Division of Correction, and the sentence with judicial or administrative transfer may be discharged in the same manner as that of an offender transferred back to the Division of Correction.

(B) The Division of Community Correction shall take over supervision of the offender in accordance with the order of the court.

(C) The Division of Community Correction shall provide for the appropriate disposition of the offender as expeditiously as practicable under rules developed by the Board of Corrections.

(D) The offender shall not be transported to the Division of Correction on the initial placement in a Division of Community Correction facility pursuant to a judicial or administrative transfer.

(E) An offender who is transferred back to the Division of Correction for disciplinary reasons may be considered for transfer to Division of Community Correction supervision after earning good-time credit equal to one-half (½) of the remainder of his or her sentence.

(F) An offender who is sentenced after July 31, 2007, and who is transferred back to the Division of Correction for administrative reasons is eligible for transfer to Division of Community Correction supervision in the same manner as an offender who is sentenced to the Division of Correction without a judicial or administrative transfer to the Division of Community Correction; and

(3)(A) Every other classified or unclassified felon who is incarcerated therefor shall be eligible for transfer to community correction after having served one-third (⅓) or one-half (½), with credit for meritorious good time, of his or her sentence depending on the seriousness determination made by the Arkansas Sentencing Commission, or one-half (½), with credit for meritorious good time, of the time to which his or her sentence is commuted by executive clemency.

(B) For example, a six-year sentence with optimal meritorious good-time credits will make the offender eligible for transfer in one (1) year if he or she is required to serve one-third (⅓) of his or her sentence, or one and one-half (1½) years if he or she is required to serve one-half (½) of his or her sentence.

(d) Except as provided for under § 16-93-621, for an offense committed before, on, or after March 20, 2017, a person who was a minor at the time of committing an offense listed under subsection (c) of this section is eligible for release on parole under this section.

History. Acts 2011, No. 570, § 99; 2017, No. 539, § 11; 2017, No. 1029, § 2; 2019, No. 315, §§ 1309, 1310; 2019, No. 910, § 914; 2021, No. 55, §§ 5-8.

A.C.R.C. Notes. Acts 2017, No. 539, § 1, provided: "Title. This act shall be known and may be cited as the 'Fair Sentencing of Minors Act of 2017'."

Acts 2017, No. 539, § 2, provided: "Legislative intent.

"(a)(1) The General Assembly acknowledges and recognizes that minors are constitutionally different from adults and that these differences must be taken into account when minors are sentenced for adult crimes.

"(2) As the United States Supreme Court quoted in Miller v. Alabama, 132 S.Ct. 2455 (2012), 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior,' and 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,' including 'parts of the brain involved in behavior control'.

"(3) Minors are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.

"(4) The United States Supreme Court has emphasized through its cases in Miller, Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 560 U.S. 48 (2010), that 'the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes'.

"(5) Youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.

"(b) In the wake of these United States Supreme Court decisions and the emerging juvenile brain and behavioral development science, several states, including Texas, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky, Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut, Vermont, Massachussets, and the District of Columbia, have eliminated the sentence of life without parole for minors.

"(c) It is the intent of the General Assembly to eliminate life without parole as a sentencing option for minors and to create more age-appropriate sentencing standards in compliance with the United States Constitution for minors who commit serious crimes."

Amendments. The 2017 amendment by No. 539 added (d).

The 2017 amendment by No. 1029 substituted "§ 16-93-621" for "§ 16-93-619" in (d).

The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(3) and (c)(2)(C).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout (c)(2).

The 2021 amendment deleted "the Community Punishment Act" preceding "§ 16-93-1201 et seq." in (b)(2) and (c)(2)(A)(i)*(a)*; inserted "or administrative" preceding "transfer" in (b)(2) and throughout (c)(2); and, in (c)(2)(A)(i)*(a)*, inserted "or administratively", deleted "specific" preceding "provision", and inserted "or authorize".

16-93-615. Parole eligibility procedures — Offenses committed after January 1, 1994.

(a)(1)(A) An inmate under sentence for any felony, except those listed in § 5-4-104(c)(2) or subsection (b) of this section, shall be transferred from the Division of Correction to the Division of Community Correction under this section and §§ 16-93-614, 16-93-616, and 16-93-617, subject to rules promulgated by the Board of Corrections or the Parole Board and conditions adopted by the Parole Board.

(B) The determination under subdivision (a)(1)(A) of this section shall be made by reviewing information such as the result of the risk-needs assessment to inform the decision of whether to release a person on parole by quantifying that person's risk to reoffend, and if

parole is granted, this information shall be used to set conditions for supervision.

(C) The Parole Board shall begin transfer release proceedings or a preliminary review under this subchapter no later than six (6) months before a person's transfer eligibility date, and the Parole Board shall authorize jacket review procedures no later than six (6) months before a person's transfer eligibility at all institutions holding parole-eligible inmates to prepare parole applications.

(D) This review may be conducted without a hearing when the inmate has not received a major disciplinary report against him or her that resulted in the loss of good time, there has not been a request by a victim to have input on transfer conditions, and there is no indication in the risk-needs assessment review that special conditions need to be placed on the inmate.

(2)(A) When one (1) or more of the circumstances in subdivision (a)(1) of this section are present, the Parole Board shall conduct a hearing to determine the appropriateness of the inmate for transfer.

(B) The Parole Board has two (2) options:

(i) To transfer the individual to the Division of Community Correction accompanied by notice of conditions of the transfer, including without limitation:

(a) Supervision levels;

(b) Economic fee sanction;

(c) Treatment program;

(d) Programming requirements; and

(e) Facility placement when appropriate; or

(ii) To deny transfer based on a set of established criteria and to accompany the denial with a prescribed course of action to be undertaken by the inmate to rectify the Parole Board's concerns.

(C) Upon completion of the course of action determined by the Parole Board and after final review of the inmate's file to ensure successful completion, the Parole Board shall authorize the inmate's transfer to the Division of Community Correction under this section and §§ 16-93-614, 16-93-616, and 16-93-617, in accordance with administrative policies and procedures governing the transfer and subject to conditions attached to the transfer.

(3) Should an inmate fail to fulfill the course of action outlined by the Parole Board to facilitate transfer to community correction, it shall be the responsibility of the inmate to petition the Parole Board for rehearing.

(4)(A) The Parole Board shall conduct open meetings and shall make public its findings for each eligible candidate for parole.

(B)(i) Open meetings held under subdivision (a)(2)(A) of this section may be conducted through video-conference technology if the person is housed at that time in a county jail and if the technology is available.

(ii) Open meetings utilizing video-conference technology shall be conducted in public.

(5) Inmate interviews and related deliberations may be closed to the public.

(b)(1) An inmate under sentence for one (1) of the following felonies is eligible for discretionary transfer to the Division of Community Correction by the Parole Board after having served one-third (⅓) or one-half (½) of his or her sentence, with credit for meritorious good time, depending on the seriousness determination made by the Arkansas Sentencing Commission, or one-half (½) of the time to which his or her sentence is commuted by executive clemency, with credit for meritorious good time:

(A) Unless the offense is listed under § 16-93-612(e)(1), the following offenses:

(i) Capital murder, § 5-10-101, or attempted capital murder;

(ii) Murder in the first degree, § 5-10-102, or attempted murder in the first degree;

(iii) Murder in the second degree, § 5-10-103;

(iv) Manslaughter, § 5-10-104;

(v) Negligent homicide, § 5-10-105; or

(vi) An offense under § 5-54-201 et seq.;

(B) Unless the offense is listed under § 16-93-612(e)(1), the following Class Y felonies:

(i) Kidnapping, § 5-11-102;

(ii) Aggravated robbery, § 5-12-103, or attempted aggravated robbery;

(iii) Terroristic act, § 5-13-310;

(iv) Causing a catastrophe, § 5-38-202(a);

(v) Arson, § 5-38-301;

(vi) Aggravated residential burglary, § 5-39-204; or

(vii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(C) Unless the offense is listed under § 16-93-612(e)(1), an offense for which the inmate is required upon release to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(D) Battery in the first degree, § 5-13-201;

(E) Domestic battering in the first degree, § 5-26-303;

(F) Engaging in a continuing criminal enterprise, § 5-64-405; or

(G) Simultaneous possession of drugs and firearms, § 5-74-106.

(2) The transfer of an offender convicted of an offense listed in subdivision (b)(1) of this section is not automatic.

(3)(A) Review of an inmate convicted of the enumerated offenses in subdivision (b)(1) of this section shall be based upon policies and procedures adopted by the Parole Board for the review, and the Parole Board shall conduct a risk-needs assessment review.

(B) The policies and procedures shall include a provision for notification of the victim or victims that a hearing shall be held and records kept of the proceedings and that there be a listing of the criteria upon which a denial may be based.

(4) Any transfer of an offender specified in this subsection shall be issued upon an order, duly adopted, of the Parole Board in accordance with such policies and procedures.

(5) After the Parole Board has fully considered and denied the transfer of an offender sentenced for committing an offense listed in subdivision (b)(1) of this section, the Parole Board may delay any reconsideration of the transfer for a maximum period of two (2) years.

(6) Notification of the court, prosecutor, county sheriff, and the victim or the victim's next of kin for a person convicted of an offense listed in subdivision (b)(1) of this section shall follow the procedures set forth below:

(A)(i) Before the Parole Board shall grant any transfer, the Parole Board shall solicit the written or oral recommendations of the committing court, the prosecuting attorney, and the county sheriff of the county from which the inmate was committed.

(ii) If the person whose transfer is being considered by the Parole Board was convicted of one (1) of the offenses enumerated in subdivision (b)(1) of this section, the Parole Board shall also notify the victim of the crime or the victim's next of kin of the transfer hearing and shall solicit written or oral recommendations of the victim or his or her next of kin regarding the granting of the transfer unless the prosecuting attorney has notified the Parole Board at the time of commitment of the prisoner that the victim or his or her next of kin does not want to be notified of future transfer hearings.

(iii) The recommendations shall not be binding upon the Parole Board in the granting of any transfer but shall be maintained in the inmate's file.

(iv) When soliciting recommendations from a victim of a crime, the Parole Board shall notify the victim or his or her next of kin of the date, time, and place of the transfer hearing;

(B)(i) The Parole Board shall not schedule transfer hearings at which victims or relatives of victims of crimes are invited to appear at a facility wherein inmates are housed other than the Central Administration Building of the Division of Correction at Pine Bluff.

(ii) Nothing herein shall be construed as prohibiting the Parole Board from conducting transfer hearings in two (2) sessions, one (1) at the place of the inmate's incarceration for interviews with the inmate, the inmate's witnesses, and correctional personnel, and the second session for victims and relatives of victims as set out in subdivision (b)(6)(B)(i) of this section;

(C)(i) At the time that any person eligible under subdivision (c)(1) of this section is transferred by the Parole Board, the Division of Community Correction shall give written notice of the granting of the transfer to the county sheriff, the committing court, and the chief of police of each city of the first class of the county from which the person was sentenced.

(ii) If the person is transferred to a county other than that from which he or she was committed, the Parole Board shall give notice to

the chief of police or marshal of the city to which he or she is transferred, to the chief of police of each city of the first class and the county sheriff of the county to which he or she is transferred, and to the county sheriff of the county from which the person was committed; and

(D)(i) It shall be the responsibility of the prosecuting attorney of the county from which the inmate was committed to notify the Parole Board at the time of commitment of the desire of the victim or his or her next of kin to be notified of any future transfer hearings and to forward to the Parole Board the last known address and telephone number of the victim or his or her next of kin.

(ii) It shall be the responsibility of the victim or his or her next of kin to notify the Parole Board of any change in address or telephone number.

(iii) It shall be the responsibility of the victim or his or her next of kin to notify the Parole Board after the date of commitment of any change in regard to the desire to be notified of any future transfer hearings.

(c)(1) In all other felonies, before the Parole Board sets conditions for transfer of an inmate to community correction, a victim, or his or her next of kin in cases in which the victim is unable to express his or her wishes, who has expressed the wish to be consulted by the Parole Board shall be notified of the date, time, and place of the transfer hearing.

(2)(A) A victim or his or her next of kin who wishes to be consulted by the Parole Board shall inform the Parole Board in writing at the time of sentencing.

(B) A victim or his or her next of kin who does not so inform the Parole Board shall not be notified by the Parole Board.

(3)(A) Victim input to the Parole Board shall be limited to oral or written recommendations on conditions relevant to the offender under review for transfer.

(B) The recommendations shall not be binding on the Parole Board, but shall be given due consideration within the resources available for transfer.

(d)(1) The Parole Board shall approve a set of conditions that shall be applicable to all inmates transferred from the Division of Correction to the Division of Community Correction.

(2) The set of conditions is subject to periodic review and revision as the Parole Board deems necessary.

(e)(1) The course of action required by the Parole Board shall not be outside the current resources of the Division of Correction nor the conditions set be outside the current resources of the Division of Community Correction.

(2) However, the Division of Correction and Division of Community Correction shall strive to accommodate the actions required by the Board of Corrections or the Parole Board to the best of their abilities.

(f) Transfer is not an award of clemency, and it shall not be considered as a reduction of sentence or a pardon.

(g) Every inmate while on transfer status shall remain in the legal custody of the Division of Correction under the supervision of the Division of Community Correction and subject to the orders of the Parole Board.

(h) An inmate who is sentenced under the provisions of § 5-4-501(c) or § 5-4-501(d) for a serious violent felony or a felony involving violence may be considered eligible for parole or for community correction transfer upon reaching regular parole or transfer eligibility, but only after reaching a minimum age of fifty-five (55) years.

(i) Decisions on parole release, courses of action applicable prior to transfer, and transfer conditions to be set by the Parole Board shall be based on a reasoned and rational plan developed in conjunction with an accepted risk-needs assessment tool such that each decision is defensible based on preestablished criteria.

History. Acts 2011, No. 570, § 100; 2013, No. 136, § 1; 2013, No. 485, § 1; 2015, No. 609 §§ 2, 3; 2015, No. 895, § 25; 2015, No. 1152, § 16; 2021, No. 1102, § 8.

Amendments. The 2021 amendment, in (a)(1)(A), inserted "§ 5-4-104(c)(2) or" and substituted "Division of Correction" for "Department of Correction".

CASE NOTES

Retroactive Application.

Circuit court erred in denying an inmate's in forma pauperis petition because he stated sufficient non-conclusory facts to assert a colorable claim for judicial review of an alleged violation of the ex post-facto prohibition; the inmate specifically alleged that his term of incarceration was extended by two years through the retroactive application of the current parole-eligibility statute, § 16-93-615, as compared to the former statute that was in effect when he committed his crime. Ruiz v. Felts, 2017 Ark. 85, 512 S.W.3d 626 (2017).

16-93-616. Parole eligibility procedures — Offenses committed after January 1, 1994 — Computation of sentence.

(a)(1) Time served for a sentence shall be deemed to begin on the day sentence is imposed, not on the day a prisoner is received by the Division of Correction.

(2) Time served shall continue only during the time in which an individual is actually confined in a county jail or other local place of lawful confinement or while under the custody and supervision of the division.

(3) Once sentenced to the division, the division shall retain legal custody of the inmate for the duration of the original sentence.

(b) The sentencing judge shall direct, when he or she imposes sentence, that time already served by the defendant in jail or other place of detention shall be credited against the sentence.

History. Acts 2011, No. 570, § 101; 2019, No. 910, § 915.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a)(1); and substituted "division" for "department" in (a)(2) and twice in (a)(3).

16-93-617. Parole eligibility procedures — Offenses committed after January 1, 1994 — Revocation of transfer.

(a) In the event an offender transferred under this section, §§ 16-93-614 — 16-93-616, or § 16-93-618 violates the terms or conditions of his or her transfer, a hearing shall follow all applicable legal requirements and shall be subject to any additional policies and rules set by the Parole Board.

(b)(1) In the event an offender transferred under this section and §§ 16-93-614 — 16-93-616, or § 16-93-618 is found to be or becomes ineligible for transfer into a Division of Community Correction facility, he or she shall be transported to the Division of Correction to serve the remainder of his or her sentence.

(2) Notice of the ineligibility and the reasons therefor shall be provided to the offender, and a hearing may be requested before the board if the offender contests the factual basis of the ineligibility. Otherwise, the board may administratively approve the transfer to the Division of Correction.

(c) An offender who is judicially transferred to a Division of Community Correction facility and subsequently transferred back to the Division of Correction by the board for disciplinary or administrative reasons may not become eligible for any further transfer under § 16-93-614(c)(2)(E) and (F).

History. Acts 2011, No. 570, § 102; 2019, No. 315, § 1311; 2019, No. 910, § 916.

Amendments. The 2019 amendment by No. 315 substituted "policies and rules" for "policies, rules, and regulations" in (a).

The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" throughout the section.

16-93-618. Parole eligibility — Certain Class Y felony offenses and certain methamphetamine offenses — Seventy-percent crimes.

(a)(1) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, and subject to delayed release under § 5-4-405, a person who is found guilty of or pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(I) of this section shall not be eligible for parole or community correction transfer, except as provided in subdivision (a)(3) or subsection (c) of this section, until the person serves seventy percent (70%) of the term of imprisonment to which the person is sentenced, including a sentence prescribed under § 5-4-501:

(A) Murder in the first degree, § 5-10-102;

(B) Kidnapping, Class Y felony, § 5-11-102;

(C) Aggravated robbery, § 5-12-103;

(D) Rape, § 5-14-103, unless the person was sentenced to life without the possibility of parole;

(E) Trafficking of persons, Class Y felony, § 5-18-103, unless the person was sentenced to life without the possibility of parole;

(F) Causing a catastrophe, § 5-38-202(a);

(G) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;

(H) Trafficking methamphetamine, § 5-64-440(b)(1); or

(I) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5).

(2)(A) The seventy-percent provision of subdivision (a)(1) of this section has no application to any person who is found guilty of or pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102, regardless of the date of the offense.

(B) The provisions of this section shall apply retroactively to all persons presently serving a sentence for kidnapping, Class B felony, § 5-11-102.

(3)(A)(i) Regardless of the date of the offense, the seventy-percent provision under subdivision (a)(1) of this section shall include credit for the award of meritorious good time under § 12-29-201 to any person who is found guilty of or pleads guilty or nolo contendere to:

(a) Manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401;

(b) Trafficking methamphetamine, § 5-64-440(b)(1); or

(c) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5).

(ii) Regardless of the date of the offense and unless the person is sentenced to a term of life imprisonment, the seventy-percent provision under subdivision (a)(1) of this section may include credit for the award of meritorious good time under § 12-29-202 to any person who is found guilty of or pleads guilty or nolo contendere to:

(a) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;

(b) Trafficking methamphetamine, § 5-64-440(b)(1); or

(c) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5).

(B) In no event shall the time served by any person who is found guilty of or pleads guilty or nolo contendere to manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401, trafficking methamphetamine, § 5-64-440(b)(1), or possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443(b), be reduced to less than fifty percent (50%) of the person's original sentence.

(4)(A) When any person sentenced under subdivision (a)(3) of this section becomes eligible for parole, the Division of Community Correction shall send a notice of the parole hearing to the prosecuting attorney of the judicial district or districts in which the person was found guilty or pleaded guilty or nolo contendere to an offense listed in subdivision (a)(1) of this section.

(B) The notice shall contain the following language in 12-point capital letters, bold type: "INMATE SENTENCED UNDER ARKANSAS CODE § 16-93-618".

(b) A jury may be instructed under § 16-97-103 regarding the awarding of meritorious good time under subdivision (a)(3) of this section.

(c) The sentencing judge, in his or her discretion, may waive subsection (a) of this section under the following circumstances:

(1) The defendant was a juvenile at the time of the offense;

(2) The juvenile was merely an accomplice to the offense; and

(3) The offense occurred on or after July 28, 1995.

(d) The awarding of meritorious good time under § 12-29-201 or § 12-29-202 does not apply to persons sentenced under subdivisions (a)(1)(A)-(E) of this section.

(e) A person who commits the offense of possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443(b), after July 27, 2011, shall not be subject to the provisions of this section.

(f) Except as provided for under § 16-93-621, for an offense committed before, on, or after March 20, 2017, a person who was a minor at the time of committing an offense listed under subsection (a) of this section is eligible for release on parole under this section.

History. Acts 2011, No. 570, § 103; 2013, No. 132, § 7; 2013, No. 133, § 7; 2013, No. 1335, § 4; 2017, No. 539, § 12; 2017, No. 1029, § 3; 2021, No. 681, § 7; 2021, No. 1102, § 9.

A.C.R.C. Notes. Acts 2017, No. 539, § 1, provided: "Title. This act shall be known and may be cited as the 'Fair Sentencing of Minors Act of 2017'."

Acts 2017, No. 539, § 2, provided: "Legislative intent.

"(a)(1) The General Assembly acknowledges and recognizes that minors are constitutionally different from adults and that these differences must be taken into account when minors are sentenced for adult crimes.

"(2) As the United States Supreme Court quoted in Miller v. Alabama, 132 S.Ct. 2455 (2012), 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior,' and 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,' including 'parts of the brain involved in behavior control'.

"(3) Minors are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.

"(4) The United States Supreme Court has emphasized through its cases in Miller, Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 560 U.S. 48 (2010), that 'the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes'.

"(5) Youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.

"(b) In the wake of these United States Supreme Court decisions and the emerging juvenile brain and behavioral development science, several states, including Texas, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky, Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut, Vermont, Massachussets, and the District of Columbia, have eliminated the sentence of life without parole for minors.

"(c) It is the intent of the General Assembly to eliminate life without parole as a sentencing option for minors and to create more age-appropriate sentencing standards in compliance with the United States Constitution for minors who commit serious crimes."

Amendments. The 2017 amendment by No. 539 added (f).

The 2017 amendment by No. 1029 substituted "§ 16-93-621" for "§ 16-93-619" in (f).

The 2021 amendment by No. 681 inserted "and subject to delayed release under § 5-4-405" in the introductory language of (a)(1).

The 2021 amendment by No. 1102 added "unless the person was sentenced to life without the possibility of parole" in (a)(1)(D) and (a)(1)(E).

16-93-621. Parole eligibility — A person who was a minor at the time of committing an offense that was committed before, on, or after March 20, 2017.

(a)(1)(A) A minor who was convicted and sentenced to the former Department of Correction or the Division of Correction for an offense committed before he or she was eighteen (18) years of age and in which the death of another person did not occur is eligible for release on parole no later than after twenty (20) years of incarceration, including any applicable sentencing enhancements, and including an instance in which multiple sentences are to be served consecutively or concurrently, unless by law the minor is eligible for earlier parole eligibility.

(B) Subdivision (a)(1)(A) of this section applies retroactively to a minor whose offense was committed before he or she was eighteen (18) years of age, including a minor serving a sentence of life, regardless of the original sentences that were imposed.

(2)(A) A minor who was convicted and sentenced to the department or the division for an offense committed before he or she was eighteen (18) years of age, in which the death of another person occurred, and that was committed before, on, or after March 20, 2017, is eligible for release on parole no later than after twenty-five (25) years of incarceration if he or she was convicted of murder in the first degree, § 5-10-102, or no later than after thirty (30) years of incarceration if he or she was convicted of capital murder, § 5-10-101, including any applicable sentencing enhancements, unless by law the minor is eligible for earlier parole eligibility.

(B) Subdivision (a)(2)(A) of this section applies retroactively to a minor whose offense was committed before he or she was eighteen (18) years of age, including minors serving sentences of life, regardless of the original sentences that were imposed.

(3) Credit for meritorious good time shall not be applied to calculations of time served under this subsection for minors convicted and sentenced for capital murder, § 5-10-101(c), or when a life sentence is imposed for murder in the first degree, § 5-10-102.

(4) The calculation of the time periods under this subsection shall include any applicable sentence enhancements to which the minor was sentenced that accompany the sentence for the underlying offense.

(b)(1) The Parole Board shall ensure that a hearing to consider the parole eligibility of a person who was a minor at the time of the offense that was committed before, on, or after March 20, 2017, takes into account how a minor offender is different from an adult offender and provides a person who was a minor at the time of the offense that was committed before, on, or after March 20, 2017, with a meaningful opportunity to be released on parole based on demonstrated maturity and rehabilitation.

(2) During a parole eligibility hearing involving a person who was a minor at the time of the offense that was committed before, on, or after March 20, 2017, the board shall take into consideration in addition to other factors required by law to be considered by the board:

(A) The diminished culpability of minors as compared to that of adults;

(B) The hallmark features of youth;

(C) Subsequent growth and increased maturity of the person during incarceration;

(D) Age of the person at the time of the offense;

(E) Immaturity of the person at the time of the offense;

(F) The extent of the person's role in the offense and whether and to what extent an adult was involved in the offense;

(G) The person's family and community circumstances at the time of the offense, including any history of abuse, trauma, and involvement in the child welfare system;

(H) The person's participation in available rehabilitative and educational programs while in prison, if those programs have been made available, or use of self-study for self-improvement;

(I) The results of comprehensive mental health evaluations conducted by an adolescent mental health professional licensed in the state at the time of sentencing and at the time the person becomes eligible for parole under this section; and

(J) Other factors the board deems relevant.

(3) A person eligible for parole under this section may have an attorney present to represent him or her at the parole eligibility hearing.

(c)(1)(A) The board shall notify a victim of the crime before the board reviews parole eligibility under this section for an inmate convicted of the crime and provide information regarding victim input meetings, as well as state and national victim resource information.

(B) If the victim is incapacitated or deceased, the notice under subdivision (c)(1)(A) of this section shall be given to the victim's family.

(C) If the victim is less than eighteen (18) years of age, the notice under subdivision (c)(1)(A) of this section shall be given to the victim's parent or guardian.

(2) Victim notification under this subsection shall include:

(A) The location, date, and time of parole review; and

(B) The name and phone number of the individual to contact for additional information.

History. Acts 2017, No. 539, § 13; 2019, No. 910, § 917; 2021, No. 1034, § 1.

A.C.R.C. Notes. Acts 2017, No. 539, § 1, provided: "Title. This act shall be known and may be cited as the 'Fair Sentencing of Minors Act of 2017'."

Acts 2017, No. 539, § 2, provided: "Legislative intent.

"(a)(1) The General Assembly acknowledges and recognizes that minors are constitutionally different from adults and that these differences must be taken into account when minors are sentenced for adult crimes.

"(2) As the United States Supreme Court quoted in Miller v. Alabama, 132 S.Ct. 2455 (2012), 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior,' and 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,' including 'parts of the brain involved in behavior control'.

"(3) Minors are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.

"(4) The United States Supreme Court has emphasized through its cases in Miller, Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 560 U.S. 48 (2010), that 'the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes'.

"(5) Youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.

"(b) In the wake of these United States Supreme Court decisions and the emerging juvenile brain and behavioral development science, several states, including Texas, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky, Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut, Vermont, Massachussets, and the District of Columbia, have eliminated the sentence of life without parole for minors.

"(c) It is the intent of the General Assembly to eliminate life without parole as a sentencing option for minors and to create more age-appropriate sentencing standards in compliance with the United States Constitution for minors who commit serious crimes."

Amendments. The 2019 amendment inserted "or Division of Correction" in (a)(1); and substituted "Department of Correction or Division of Correction" for "department" in (a)(2)(A).

The 2021 amendment inserted "former" in (a)(1)(A); added (a)(1)(B); and made a stylistic change in (a)(1)(A).

CASE NOTES

Analysis

Applicability.
Appeal by State.
Juveniles Sentenced to Life Imprisonment.

Applicability.

Parole-eligibility provisions in subdivision (a)(2) of this section, which were enacted by the Fair Sentencing of Minors Act of 2017 (FSMA), apply only to those juvenile offenders who are serving a sentence for either capital murder or first-degree murder. Therefore, the provisions did not apply to defendant, whose mandatory sentence of life without parole had been vacated in 2016 under Jackson v. Norris, 2013 Ark. 175, and his case remanded for resentencing. Harris v. State, 2018 Ark. 179, 547 S.W.3d 64 (2018).

In accord with Harris v. State, 2018 Ark. 179. Robinson v. State, 2018 Ark. 353, 563 S.W.3d 530 (2018).

Appeal by State.

The limited number of individuals affected by Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and Montgomery v. Louisiana, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), coupled with the unsettled state of the law regarding sentencing of juvenile offenders, was reason enough to find that the State had not demonstrated that its appeal involved the correct and uniform administration of the law or was a proper State appeal.

State v. Lasley, 2017 Ark. 311, 530 S.W.3d 350 (2017).

Although the State argued that a declaration of error was needed to ensure correctness and uniformity across the state on the use of jury instructions in similar juvenile resentencing cases, the State's appeal was dismissed under Ark. R. App. P. Crim. 3 as it did not present an issue with "widespread ramifications" concerning interpretation of the criminal rules. The Fair Sentencing of Minors Act of 2017, § 16-93-621, provided for parole for offenders who were juveniles when they committed capital murder. State v. Lasley, 2017 Ark. 311, 530 S.W.3d 350 (2017).

Juveniles Sentenced to Life Imprisonment.

Circuit court properly denied defendant's petition for writ of habeas corpus because the sentence of life imprisonment that was imposed after he entered a negotiated plea of guilty to first-degree murder when he was 15 years old did not violate the Eighth Amendment, as 2017 statutory changes created a possibility of parole. Lohbauer v. Kelley, 2018 Ark. 26 (2018).

16-93-622. Parole discharge for offenders who are minors — Reinstatement of rights.

(a) The Parole Board may discharge a person from parole if:

(1) The person:

(A) Was released on parole under § 16-93-621 for having committed an offense as a minor; and

(B) Has served at least five (5) years on parole without a violation; and

(2) The prosecuting attorney in the county where the person was originally convicted has consented to the discharge of the person from parole.

(b) Unless otherwise provided by Arkansas Constitution, Amendment 51, a person who has been discharged from parole under subsection (a) of this section shall have his or her constitutional right to vote restored.

History. Acts 2019, No. 821, § 2.

Subchapter 7 — Parole

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective

on and after January 1, 2018."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-93-701. Authority to grant and parameters.

(a)(1) The Parole Board may release on parole any eligible inmate who is confined in any correctional institution administered by the Division of Correction or the Division of Community Correction, when in the board's opinion there is a reasonable probability that the inmate can be released without detriment to the community or himself or herself and is able and willing to fulfill the obligations of a law-abiding citizen.

(2) All paroles shall issue upon order, duly adopted, of the board.

(b)(1) Before ordering the release of an eligible inmate, the inmate shall be interviewed by the board or a parole revocation judge or investigator employed by the board, unless a hearing is not required under § 16-93-615(a)(1)(D) and, for all parole decisions after January 1, 2012, the board shall consider the results of the risk-needs assessments of all parole applicants.

(2) The parole shall be ordered only for the best interest of society and shall not be considered as a reduction of sentence or pardon.

(3) An inmate while on parole shall remain in the legal custody of the agency from which he or she was released, but shall be subject to the orders of the board.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 29; A.S.A. 1947, § 43-2808; Acts 1989, No. 937, § 6; 2011, No. 570, § 104; 2015, No. 609, § 5; 2019, No. 910, § 918.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a)(1).

CASE NOTES

Appeal Not Moot.

Even assuming that defendant was released on parole, his appeal concerning jail-time credit was not moot because the resolution of the issue on appeal would have necessarily affected the duration of his parole as well as his prison-time exposure in the event his parole was revoked. Polston v. State, 2020 Ark. App. 530 (2020).

16-93-703. Procedures — Place of hearings.

(a) The Parole Board shall not schedule parole hearings at which victims or relatives of victims of crime are invited to appear at a facility wherein inmates are housed other than the Central Administration Building of the Division of Correction at Pine Bluff.

(b) Nothing in this section shall be construed as prohibiting the board from conducting parole hearings in two (2) sessions, one (1) at the place of the inmate's incarceration for interviews with the inmate, the inmate's witnesses, and correctional personnel, and the second session for victims and relatives of victims as set out in subsection (a) of this section.

History. Acts 1983, No. 525, §§ 1, 2; A.S.A. 1947, §§ 43-2819.1, 43-2819.2; Acts 2011, No. 570, § 104; 2019, No. 910, § 919.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a).

16-93-705. Revocation — Procedures and hearings generally.

(a)(1)(A)(i) At any time during a parolee's release on parole, the Parole Board may issue a warrant for the arrest of the parolee for violation of any conditions of parole or may issue a notice to appear to answer a charge of a violation.

(ii) The Division of Community Correction shall provide the information necessary for the board to issue a warrant under subdivision (a)(1)(A)(i) of this section.

(B)(i) The board shall issue a warrant for the arrest of a parolee if the board determines that the parolee has been charged with a felony involving violence, as defined under § 5-4-501(d)(2), or a felony requiring registration under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(ii) The Division of Community Correction shall provide the information necessary for the board to issue a warrant under subdivision (a)(1)(B)(i) of this section.

(iii) A parolee arrested on a warrant issued under subdivision (a)(1)(B)(i) of this section shall be detained pending a mandatory parole revocation hearing.

(2) The warrant or notice shall be served personally upon the parolee.

(3) The warrant shall authorize all officers named in the warrant to place the parolee in custody at any suitable detention facility pending a hearing.

(4) Any parole officer may arrest a parolee without a warrant or may deputize any officer with power of arrest to arrest the parolee without a warrant by giving him or her a written statement setting forth that the parolee, in the judgment of the parole officer, violated conditions of his or her parole.

(5) The written statement delivered with the parolee by the arresting officer to the official in charge of the detention facility to which the

parolee is brought shall be sufficient warrant for detaining him or her pending disposition.

(6) If the board or its designee finds, by a preponderance of the evidence, that the parolee has inexcusably failed to comply with a condition of his or her parole, the parole may be revoked at any time prior to the expiration of the period of parole.

(7) A parolee for whose return a warrant has been issued by the board shall be deemed a fugitive from justice if it is found that the warrant cannot be served.

(8) The board shall determine whether the time from the issuance of the warrant to the date of arrest, or any part of it, shall be counted as time served under the sentence.

(b)(1) A parolee arrested for violation of parole shall be entitled to a preliminary hearing to determine whether there is reasonable cause to believe that he or she has violated a condition of parole.

(2) The preliminary hearing shall be scheduled within seven (7) days after arrest and conducted within fourteen (14) days after arrest, excluding a weekend, holiday, or delay caused by an act of nature, by the parole revocation judge for the board and reasonably near the place of the alleged violation or arrest.

(3) The parolee shall be given prior notice of the date, time, and location of the preliminary hearing, the purpose of the preliminary hearing, and the conditions of parole he or she is alleged to have violated.

(4) Except as provided in subsection (d) of this section, the parolee shall have the right to hear and controvert evidence against him or her, to offer evidence in his or her own behalf, and to be represented by counsel.

(5) If the parole revocation judge finds that there is reasonable cause to believe that the parolee has violated a condition of parole, the parole revocation judge may order the parolee returned to the nearest facility of the Division of Correction or Division of Community Correction where the parolee shall be placed in custody for a parole revocation hearing before the board.

(6) If the parole revocation judge finds that there is reasonable cause to believe that the parolee has violated a condition of parole, the parole revocation judge may return the parolee to parole supervision rather than to the custody of the Division of Correction and may impose additional supervision conditions in response to the violating conduct.

(7) If the parole revocation judge does not find reasonable cause, he or she shall order the parolee released from custody, but that action shall not bar the board from holding a parole revocation hearing on the alleged violation of parole or from ordering the parolee to appear before the board.

(8) The parole revocation judge shall prepare and furnish to the board and the parolee a summary of the parole revocation hearing, including the substance of the evidence and testimony considered along with the ruling or determination, within twenty-one (21) days from the

date of the preliminary hearing, excluding a weekend, holiday, or delay caused by an act of nature.

(c)(1)(A) Unless a parole revocation hearing is knowingly and intelligently waived by the parolee, a parole shall not be revoked except after a parole revocation hearing, which shall be conducted by the board or its designee within a reasonable period of time after the parolee's arrest.

(B) If a waiver is granted under subdivision (c)(1)(A) of this section, the parolee may subsequently appeal the waiver to the board.

(2) The parolee shall be given prior notice of the date, time, and location of the parole revocation hearing, the purpose of the parole revocation hearing, and the conditions of parole he or she is alleged to have violated.

(3) Except as provided in subsection (d) of this section, the parolee shall have the right to hear and controvert evidence against him or her, to offer evidence in his or her own defense, and to be represented by counsel.

(4) If parole is revoked, the board or its designee shall prepare and furnish to the parolee a written statement of evidence relied on and the reasons for revoking parole.

(d) At a preliminary hearing under subsection (b) of this section or a parole revocation hearing under subsection (c) of this section:

(1) The parolee shall have the right to confront and cross-examine adverse witnesses unless the parole revocation judge or the board or its designee specifically finds good cause for not allowing confrontation; and

(2) The parolee may introduce any relevant evidence of the alleged violation, including letters, affidavits, and other documentary evidence, regardless of its admissibility under the rules governing the admission of evidence.

(e) A preliminary hearing under subsection (b) of this section shall not be required if:

(1) The parolee waives a preliminary hearing; or

(2) Unless a parole revocation hearing is knowingly and intelligently waived by the parolee under subsection (c) of this section, the parole revocation hearing under subsection (c) of this section is held within fourteen (14) calendar days after the arrest and reasonably near the place where the alleged violation occurred or where the parolee was arrested.

(f) A preliminary hearing under subsection (b) of this section and a parole revocation hearing under subsection (c) of this section shall not be necessary if the parole revocation is based on the parolee's conviction, guilty plea, or plea of nolo contendere to a felony offense for which he or she is sentenced to the Division of Correction or to any other state or federal correctional institution.

(g) The county sheriff or keeper of the county jail may permit the parolee to be held in the county jail while awaiting the parole revocation hearing under this section and ruling of the board or its designee.

(h) A parolee whose parole is revoked under this section due to a technical conditions violation or serious conditions violation and who is sentenced to any period of incarceration resulting from that revocation is subject to the periods of incarceration under § 16-93-715.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 31; 1983, No. 771, § 1; A.S.A. 1947, § 43-2810; 2011, No. 570, § 104; 2013, No. 130, §§ 1, 2; 2013, No. 320, §§ 4-6; 2013, No. 1029, § 1; 2015, No. 1239, § 1; 2017, No. 423, § 21; 2019, No. 910, §§ 920-923.

Amendments. The 2017 amendment added (h).

The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" throughout the section.

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

16-93-706. Revocation — Subpoena of witnesses and documents.

(a)(1) The Chair of the Parole Board or his or her designee, the hearing officer presiding over any preliminary hearing with respect to an alleged parole violation, the administrator of the Parole Board, or any member of the board pursuant to the authority of the board to meet and determine whether to revoke parole shall have the power to issue oaths and to subpoena witnesses to appear and testify and bring before the hearing officer or the board any relevant books, papers, records, or documents.

(2) The subpoena shall be directed to any county sheriff, county coroner, or constable of any county where the designated witness resides or is found. The endorsed affidavit on the subpoena of any person of full age shall be proof of the service, which shall be served and returned in the same manner as subpoenas in civil actions in the circuit courts are served and returned.

(b) The fees and mileage expenses as prescribed by law for witnesses in civil cases shall be paid by the Division of Correction.

(c)(1) In case of failure or refusal by any person to comply with a subpoena issued under this section to testify or answer to any matter regarding which the person may be lawfully interrogated, any circuit court in this state, on application of the hearing officer or the chair, shall, in term or vacation, issue an attachment for the person and compel him or her to comply with the subpoena and appear before the hearing officer or the board and to produce any testimony and documents as may be required.

(2) The circuit court shall have the power to punish any contempt, in case of disobedience, as in civil cases, or it shall be a misdemeanor for a witness to refuse or neglect to appear and testify, punishable upon conviction by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500).

(d) Any person willfully testifying falsely under oath before the board or at a preliminary hearing in which probable cause for parole revocation is to be considered as to any matter material to a lawful

inquiry by the board or hearing officer may be charged with perjury and upon conviction punished accordingly.

History. Acts 1975, No. 735, §§ 1-4; A.S.A. 1947, §§ 43-2824 — 43-2827; Acts 2011, No. 570, § 104; 2019, No. 910, § 924.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (b).

16-93-709. Sex offender may not reside with minors.

(a) Whenever an inmate in a facility of the Division of Correction who has been found guilty of or has pleaded guilty or nolo contendere to any sexual offense defined in § 5-14-101 et seq., or incest as defined by § 5-26-202, and the sexual offense or incest was perpetrated against a minor, becomes eligible for parole and makes application for release on parole, the Parole Board shall prohibit, as a condition of granting the parole, the parolee from residing upon parole in a residence with any minor, unless the board makes a specific finding that the inmate poses no danger to the minors residing in the residence.

(b) If the board, upon a hearing under § 16-93-705, finds, by a preponderance of the evidence, that the parolee has failed to comply with this condition of parole, the parole may be revoked and the parolee returned to the custody of the division.

History. Acts 1997, No. 1188, § 2; 2011, No. 570, § 104; 2019, No. 910, § 925.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a); and substituted "division" for "department" in (b).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Conditions of Probation or Supervised Release Prohibiting Contact with Minors or Frequenting Places Where Minors Congregate — State Cases. 4 A.L.R.7th Art. 3 (2015).

16-93-710. Parole for inmates who have served their term of imprisonment in a county jail prior to being processed into the Division of Correction.

(a)(1) Subject to conditions set by the Parole Board, an offender convicted of a felony and sentenced to a term of imprisonment of two (2) years or less in the Division of Correction, and who has served his or her term of imprisonment in a county jail prior to being processed into the Division of Correction, may be paroled from the Division of Correction county jail backup facility directly to the Division of Community Correction under parole supervision, and upon eligibility determination, processed for release by the board.

(2) Transfer release proceedings or a preliminary review under this subchapter shall begin no later than six (6) months prior to a person's transfer eligibility date, and the board shall authorize jacket review procedures at all institutions holding parole-eligible inmates to prepare parole applications to comply with this time frame.

(3) The jacket review will be conducted by staff either from the Division of Community Correction or the Division of Correction.

(b) An offender who has been found guilty of or pleaded guilty or nolo contendere to a violent offense as defined by § 5-4-501(c)(2) or a Class Y felony offense shall be ineligible under this section.

(c) As determined by the county sheriff, an offender who has committed violent or sexual acts while incarcerated in a county jail facility shall be ineligible to participate in the program established by this section.

History. Acts 2011, No. 570, § 104; 2019, No. 910, § 926.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout (a).

16-93-712. Parole supervision.

(a)(1) The Parole Board shall establish written policies and procedures governing the supervision of parolees designed to enhance public safety and to assist the parolees in reintegrating into society.

(2)(A) The supervision of parolees shall be based on evidence-based practices, including a validated risk-needs assessment.

(B) Decisions shall target the parolee's criminal risk factors with appropriate supervision and treatment designed to reduce the likelihood of reoffense.

(b) A parole officer shall:

(1) Investigate each case referred to him or her by the Chair of the Parole Board, the Division of Community Correction, or the prosecuting attorney;

(2) Furnish to each parolee under his or her supervision a written statement of the conditions of parole and instruct the parolee that he or she must stay in compliance with the conditions of parole or risk revocation under § 16-93-705;

(3) Develop a case plan for each individual who is assessed as being moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the parolee's conduct and condition through visitation, required reporting, or other methods and shall report to the board that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a parolee to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the parolee, including without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial screening and, if necessary, a comprehensive assessment;

(7) Make decisions with the assistance of the risk-needs assessment that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(8) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

(c)(1) The Division of Community Correction shall allocate resources, including the assignment of parole officers, to focus on moderate-risk and high-risk offenders as determined by the validated risk-needs assessment provided in subdivision (b)(6) of this section.

(2) The Division of Community Correction shall require each public and private treatment and service provider that receives state funds for the treatment of or service for parolees to use evidence-based programs and practices.

(d)(1) The Division of Community Correction shall have the authority to sanction a parolee administratively without engaging the revocation process under § 16-93-705.

(2)(A)(i) The Division of Community Correction shall develop an intermediate sanctions procedure and grid to guide a parole officer in determining the appropriate response to a violation of conditions of supervision.

(ii) The intermediate sanctions procedure shall include a requirement that the parole officer consider multiple factors when determining the sanction to be imposed, including previous violations and sanctions and the severity of the current and prior violation.

(B) Intermediate sanctions administered by the Division of Community Correction are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening or treatment, or both;

(D) Increased monitoring, including electronic monitoring and home confinement; and

(E)(i) Incarceration in a county jail for no more than seven (7) days or incarceration in a Division of Community Correction facility or Division of Correction facility for no more than one hundred twenty (120) days.

(ii)*(a)* Incarceration as an intermediate sanction shall not be used more than six (6) times with an individual parolee.

(b) A parolee shall accumulate no more than twenty-one (21) days' incarceration in a county jail or no more than two hundred forty (240) days' incarceration in a Division of Community Correction facility or Division of Correction facility as an intermediate sanction before the parole officer recommends a violation of the person's parole under § 16-93-706.

(c) A parolee is subject to a period of incarceration of:

(1) Up to sixty (60) days in a Division of Community Correction facility or Division of Correction facility for a technical conditions violation; and

(2) One hundred twenty (120) days in a Division of Community Correction facility or Division of Correction facility for a serious conditions violation.

(d) A parolee may not be incarcerated more than two (2) times as a parole sanction in a Division of Community Correction facility or Division of Correction facility.

(e) Any time in custody for which the parolee is held before a period of incarceration under this section is administered shall not count as a period of incarceration ordered under subdivision (d)(3)(E)(ii)*(a)* of this section or toward the total accumulation of days of incarceration as set forth in subdivision (d)(3)(E)(ii)*(b)* of this section.

(f) A period of incarceration under this section:

(1) May be reduced by the Division of Correction or the Division of Community Correction for good behavior and successful program completion; and

(2) Shall not be reduced under this section for more than fifty percent (50%) of the total time of incarceration ordered to be served.

(g) If a parolee is in custody in a county jail awaiting an administrative sanction under this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

History. Acts 2011, No. 570, § 104; 2013, No. 1415, § 1; 2015, No. 895, § 29; 2017, No. 423, § 22; 2019, No. 910, §§ 927-932; 2021, No. 327, § 2.

Amendments. The 2017 amendment substituted "Department of Community Correction" for "department" throughout (c), (d)(1), and (d)(2); added "or incarceration in a Department of Community Correction facility or Department of Correction facility for no more than one hundred eighty (180) days" in (d)(3)(E)(i); rewrote and redesignated former (d)(3)(E)(ii) as (d)(3)(E)(ii)*(a)*; added (d)(3)(E)(ii)*(b)* through (d)(3)(E)(ii)*(d)*; and added (e) through (g).

The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" throughout the section.

The 2021 amendment substituted "one hundred twenty (120) days" for "one hundred eighty (180) days" in (d)(3)(E)(i); substituted "two hundred forty (240) days'" for "three hundred sixty (360) days'" in (d)(3)(E)(ii)*(b)*; substituted "sixty (60) days" for "ninety (90) days" in (d)(3)(E)(ii)*(c)(1)*; and in (d)(3)(E)(ii)*(c)(2)*, substituted "One hundred twenty (120) days" for "Exactly one hundred eighty (180) days" and inserted "facility" following "Division of Community Correction".

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

16-93-715. Revocation — Technical conditions violations and serious conditions violations.

(a)(1) If a parolee is subject to a parole revocation hearing under this subchapter for a technical conditions violation or a serious conditions violation, the parolee is subject to confinement for the following periods, subject to subdivision (a)(2)(A) of this section, before being released and returned to parole supervision:

(A) Up to sixty (60) days' confinement for a technical conditions violation; and

(B) One hundred twenty (120) days' confinement for a serious conditions violation.

(2)(A) A period of confinement under subdivision (a)(1) of this section may be reduced by the Division of Correction or the Division of Community Correction for good behavior and successful program completion.

(B) A period of confinement shall not be reduced under subdivision (a)(2)(A) of this section for more than fifty percent (50%) of the total time of confinement ordered to be served.

(3) Any time in custody for which the person is held before a period of confinement is ordered to be served under subdivision (a)(1) of this section shall not be credited to the overall period of confinement ordered under subdivision (a)(1) of this section.

(b)(1) Except as provided for in subdivision (b)(2) of this section, if a parolee is subject to a revocation hearing under this subchapter or an administrative parole sanction for a technical conditions violation or a serious conditions violation, the parolee is subject to confinement according to the time periods set out in § 16-93-712(d) and subdivision (a)(1) of this section without having his or her parole revoked.

(2)(A) A parolee is subject to having his or her parole revoked and being returned to the Division of Correction or the Division of Community Correction for the next violation of his or her parole if the parolee has been confined six (6) times under § 16-93-712(d).

(B) After a parolee has been confined two (2) times under subdivision (a)(1) of this section for any combination of a technical conditions violation or serious conditions violation for any period of time, the parolee is subject to having his or her parole revoked and being returned to the Division of Correction or the Division of Community Correction for the next violation of his or her parole.

(C) A parolee is subject to having his or her parole revoked and being returned to the Division of Correction or the Division of Community Correction under this section without having been sanctioned for a period of confinement set out under § 16-93-712(d) or subdivision (a)(1) of this section if the Parole Board determines by a preponderance of the evidence that the parolee is engaging in or has engaged in behavior that poses a threat to the community.

(c) The location of the appropriate confining facility in which a parolee serves a period of confinement under this section shall be determined by the Board of Corrections.

(d) A period of confinement that a parolee serves as a result of being arrested for a parole violation but before being administratively sanctioned shall not count as a period of confinement for the purposes of the aggregate number of periods of confinement under this section.

(e) Noncompliance with Division of Correction or Division of Community Correction program requirements or violent or sexual behavior while confined for a technical conditions violation or serious conditions violation under this section may result in revocation of the parolee's parole for a period of time exceeding the limitations of subdivision (a)(1)

of this section, up to and including the time remaining on the person's original sentence.

History. Acts 2017, No. 423, § 23; 2019, No. 910, §§ 933-935; 2021, No. 327, § 3.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

The 2021 amendment substituted "sixty (60) days'" for "ninety (90) days'" in (a)(1)(A); and substituted "One hundred twenty (120) days'" for "Exactly one hundred eighty (180) days'" in (a)(1)(B).

Effective Dates. Acts 2017, No. 423, § 37: "(a) Sections 16 through 23 of this act are effective on and after October 1, 2017. (b) Section 15 of this act is effective on and after January 1, 2018."

Subchapter 12 — Community Correction

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-93-1202. Definitions.

As used in this subchapter:

(1) "Board" means the Board of Corrections;

(2) "Community correction" means:

(A) Probation, a judicially imposed criminal sanction permitting varying levels of supervision of eligible offenders in the community;

(B) Economic sanctions programs, including an active organized collection of fees, fines, restitution, day fines, day reporting centers, and penalties attached for nonpayment of fines;

(C) Home detention programs, ranging from curfew programs to house arrest with and without electronic monitoring;

(D) Community service programs, including both supervised and unsupervised work assignments and projects such that offenders provide substantial labor benefit to the community;

(E) Work-release programs, including residential and nonresidential forms of labor, with salary, in the community;

(F) Restitution programs, an organized collection and dissemination of restitution by a designated entity within the community correction range of services, including, when necessary, the use of restitution centers such that the offender is held accountable and the victim receives restitution ordered by the court in a timely fashion;

(G)(i) Community correction facilities, multipurpose facilities encompassing security, correction, and services such that offenders can be housed therein when necessary but can also be assigned to or access correction programs and services which are housed there.

(ii) Included therein are revocation centers, restitution centers, work-release centers, and community correction centers;

(H) Boot camps, highly regimented programs encompassing strict discipline, education, treatment, and counseling designed to have the greatest positive impact on the offender in the shortest period of time;

(I) Drug and alcohol treatment services, including both inpatient and outpatient drug and alcohol abuse treatment and counseling provided by qualified community correction service provider programs for correctional clients;

(J) Educational programs, including programs focused on the acquisition of basic learning skills, general educational developmental preparation, literacy training, and other applicable areas of education that are of value to correctional clients;

(K) Vocational programs, focused on the learning of a marketable skill by correctional clients utilizing qualified vocational and technical community correction service provider programs whenever possible;

(L) Job skills programs, focused on the acquisition of basic job skills, especially those related to how to get a job and how to keep a job;

(M) Mental health treatment services, including both inpatient and outpatient mental health, family, and psychological counseling and treatment provided by qualified community correction service provider programs for correctional clients;

(N) Parole, an administrative condition permitting state supervision of eligible offenders sentenced to state correctional facilities and released therefrom to community correction programs or supervision;

(O) Post-prison supervision, an administrative condition permitting state supervision of offenders sentenced to state correctional facilities and transferred from there to community correction programs or community supervision; and

(P) Pretrial programs, including the supervision and monitoring of certain defendants while awaiting sentencing or disposition by a court;

(3) "Community correction service provider program" means a public or private organization which provides treatment, guidance, training, support, or other rehabilitative services to individual offenders, of-

fender groups, and their families in such areas as health, education, vocational training, special education, social services, psychological counseling, alcohol and drug treatment, and other applicable correctional concerns;

(4) "Division of Community Correction" means the administrative structure in place to oversee the development and operation of community correction facilities, programs, and services, including probation and parole supervision;

(5) "Division of Correction" means the administrative structure in place to oversee the daily operation of secure prison facilities;

(6) "Eligibility" or "eligible offender" means any person convicted of a felony who is by law eligible for such sentence or who is otherwise under the supervision of the Division of Community Correction and who falls within the population targeted by the General Assembly for inclusion in community correction facilities and who has not been subject to a disciplinary violation for a violent act or for sexual misconduct while in the custody of a jail or correctional facility and does not have a current or previous conviction for a violent or sexual offense listed under subdivision (10)(A)(ii) of this section;

(7) "Incarceration" means commitment to the Division of Correction;

(8) "Supervision" means direct supervision at varying levels of intensity by either probation officers, in the case of sentences to probation with a condition of community correction, or parole and post-prison supervision officers, in the case of offenders eligible for release on parole or offenders transferred to community correction or community supervision from the Division of Correction;

(9) "Suspended imposition of sentence" means a procedure whereby a defendant who pleads or is found guilty of an offense is released by the court without pronouncement of sentence and without supervision;

(10)(A)(i) "Target group" means a group of offenders who have committed one (1) or more of the following offenses without limitation:

(a) Terroristic threatening, § 5-13-301, if a firearm was not used or brandished during the commission of the offense;

(b) Endangering the welfare of a minor in the first degree, § 5-27-205;

(c) Theft, § 5-36-101 et seq.;

(d) Theft by receiving, § 5-36-106;

(e) Fraudulent use of a credit card or debit card, § 5-37-207;

(f) Violation of the Arkansas Hot Check Law, § 5-37-301 et seq.;

(g) Criminal mischief in the first degree, § 5-38-203, and criminal mischief in the second degree, § 5-38-204;

(h) Commercial burglary, § 5-39-201(b);

(i) Breaking or entering, § 5-39-202;

(j) Failure to appear, § 5-54-120;

(k) Drug paraphernalia, § 5-64-443;

(l) Driving or boating while intoxicated, § 5-65-103, fourth or subsequent offense;

(m) Leaving the scene of an accident resulting in death or injury, § 27-53-101;

(n) A Class C felony or Class D felony that is not violent or sexual and that meets the eligibility criteria determined by the General Assembly to have significant impact on the use of correctional resources;

(o) A controlled substance felony, other than trafficking a controlled substance, § 5-64-440;

(p) An unclassified felony for which the prescribed limitations on the sentence do not exceed the prescribed limitations for a Class B felony and that is not violent or sexual; and

(q) Solicitation, attempt, or conspiracy to commit an offense listed in this subdivision (10)(A)(i).

(ii) As used in this subdivision (10)(A), "violent or sexual" includes:

(a) An offense against the person under § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., § 5-13-310, and § 5-14-101 et seq.; and

(b) An offense containing as an element of the offense the use of physical force, the threatened use of serious physical force, the infliction of physical injury, or the creation of a substantial risk of serious physical injury, and an offense for which the offender is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(iii) For the purpose of the sealing of a criminal record under § 16-93-1207, "target group" includes any misdemeanor conviction except a misdemeanor conviction for which the offender is required to register as a sex offender or a misdemeanor conviction for driving while intoxicated.

(B) Except for those offenders assigned to a technical violator program, only those offenders falling within the target group population may access community correction facilities whether by judicial transfer, administrative transfer, drug court sanction, or probation sanction.

(C) Final determination of eligibility for placement in any community correction center or program is the responsibility of the Division of Community Correction;

(11) "Transfer" means an administrative condition permitting transfer of eligible offenders sentenced to traditional state correctional facilities to community correction facilities, programming, and community supervision, provided that only target offenders are eligible for the facilities;

(12)(A) "Transfer date" means the earliest date on which an offender is eligible for transfer from the Division of Correction to the Division of Community Correction.

(B) The date may be extended based on disciplinary behavior while under the custody of the Division of Correction; and

(13) "Trial court" means any court of this state having jurisdiction of an eligible offender and the power to sentence the eligible offender to the included options, subject to eligibility determination by the Division of Community Correction.

History. Acts 1993, No. 531, § 3; 1993, No. 548, § 3; 1995, No. 577, § 1; 1997, No. 279, § 1; 1997, No. 945, § 2; 2001, No. 1255, § 1; 2003, No. 245, § 1; 2003, No. 1018, § 1; 2005, No. 1994, § 287; 2007, No. 744, § 3; 2013, No. 1460, § 14; 2015, No. 549, § 2; 2017, No. 423, §§ 24-26; 2019, No. 910, §§ 936-939; 2021, No. 878, § 1.

Amendments. The 2017 amendment, in (6), inserted "or who is otherwise under the supervision of the Department of Community Correction", deleted "or who is otherwise under the supervision of the Department of Community Correction" following "community correction facilities", and added "and does not have a current or previous conviction for a violent or sexual offense listed under subdivision (10)(A)(iii) of this section"; in (10)(A)(i), inserted "Class B felonies" in the middle and substituted "Class B" for "Class C" near the end; added "and an offense for which the offender is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq." in (10)(A)(iii); in (10)(B), substituted "Except for those offenders assigned to a technical violator program, only those offenders" for "Offenders" and "whether by judicial transfer, administrative transfer, drug court sanction, or probation sanction" for "pursuant to § 16-93-1208"; added (10)(C); and added "subject to eligibility determination by the Department of Community Correction" in (13).

The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" throughout the section.

The 2021 amendment rewrote (10)(A); and deleted "and offenses" preceding "falling" in (10)(B).

16-93-1203. Board of Corrections — Powers and duties.

The Board of Corrections shall have the following duties and responsibilities with regard to community correction programming:

(1) Establish community correction programs to which eligible offenders may be assigned as a condition of probation, sentenced to by the trial court pursuant to this subchapter, paroled to upon release from incarceration, or transferred to after incarceration in the Division of Correction;

(2) Notify the trial courts of the state having criminal jurisdiction of the availability of certified and approved community correction programs;

(3) Establish standards for the monitoring, auditing, and certification of community correction programs;

(4) Establish rules relating to the operation of community correction programs and the supervision of eligible offenders participating therein;

(5) Promote cooperation among the courts and various law enforcement and correctional agencies of this state in the implementation of community correction programs;

(6) Direct the departments, divisions, and other entities involved in the implementation of community correction options in a manner that will promote the safety and welfare of the people of this state;

(7) Establish rules and procedures which shall be required or deemed appropriate for the implementation and ongoing operation of community correction; and

(8) Establish minimum standards of eligibility and certification processes for all community correction programs eligible to receive offenders under this subchapter.

History. Acts 1993, No. 531, § 4; 1993, No. 548, § 4; 2005, No. 1994, § 287; 2019, No. 315, §§ 1312, 1313; 2019, No. 910, §§ 940, 941.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (4); and deleted "regulations" following "rules" in (7).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" in (1); and inserted "divisions" in (6).

16-93-1205. Operation and supervision of community correction programs.

(a) The Board of Corrections shall promulgate policies and rules relating to the operation of community correction facilities and programs, the supervision of eligible offenders participating therein, and the termination of that participation, including but not limited to:

(1) The terms, conditions, and qualifications of program eligibility;

(2) The time to be spent in specific correction and treatment programs designated as community correction;

(3) Receipt of compensation in the form of fees or other available sources from the eligible offender while participating in a community correction program;

(4) Allocation of compensation received by an eligible offender while participating in a community correction program, including designation to the Division of Community Correction of a percentage of any compensation received for the purpose of defraying the costs to the division of establishing and operating community correction programs and the costs of the offender's custody and care;

(5) Receipt of compensation from public entities who benefit from the labor of offenders involved in community correction work programs; and

(6) Collection of economic sanctions imposed by the court, including, but not limited to, restitution, fines, fees, or other monetary penalties attached to an offender's sentence.

(b) The division shall supervise all eligible offenders participating in any community correction program with the goal of promoting the safety and welfare of the people of the state.

History. Acts 1993, No. 531, § 5; 1993, No. 548, § 5; 2005, No. 1994, § 287; 2019, No. 315, § 1314.

Amendments. The 2019 amendment substituted "policies and rules" for "policies, rules, and regulations" in the introductory language of (a).

16-93-1207. Order of court.

(a) Upon the sentencing or placing on probation of any person under the provisions of this subchapter, the sentencing court shall issue an order or commitment, whichever is appropriate, in writing, setting forth the following:

(1) That the offender is being:

(A) Committed to the Division of Correction;

(B) Committed to the Division of Correction with judicial transfer to the Division of Community Correction;

(C) Placed on suspended imposition of sentence;

(D) Placed on probation under the provisions of this subchapter; or

(E) Committed to a county jail for a misdemeanor offense committed after January 1, 2007;

(2) That the offender has knowledge and understanding of the consequences of the sentence or placement on probation and violations thereof;

(3) A designation of sentence or supervision length along with community correction program distinctions of that sentence or supervision length;

(4) Any applicable terms and conditions of the sentence or probation term; and

(5) Presentence investigation or sentencing information, including, but not limited to, criminal history elements and other appropriate or necessary information for correctional use.

(b)(1) Upon the successful completion of probation or a commitment to the Division of Correction with judicial transfer to the Division of Community Correction or a commitment to a county jail for one (1) of the offenses targeted by the General Assembly for community correction placement, the court may direct that the record of the offender be sealed with regards to the offense of which the offender was either convicted or placed on probation under the condition that the offender has no more than one (1) previous felony conviction and that the previous felony was other than a conviction for:

(A) A capital offense;

(B) Murder in the first degree, § 5-10-102;

(C) Murder in the second degree, § 5-10-103;

(D) Rape, § 5-14-103;

(E) Kidnapping, § 5-11-102;

(F) Aggravated robbery, § 5-12-103; or

(G) Delivering controlled substances to a minor as prohibited in the former § 5-64-410.

(2) The fact that a prior felony conviction has been previously sealed shall not prevent its counting as a prior conviction for the purposes of this subsection.

(3) The procedure, effect, and definition of "sealed" for the purposes of this subsection shall be in accordance with that established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(c) A court as a condition of probation shall order the defendant to:

(1)(A)(i) Enroll in and complete a vocational, technical, educational, or similar program if the court finds that the defendant's lack of an employable or marketable skill contributes to the defendant's being unemployed.

(ii) The court may order the person to pay tuition for any vocational, technical, educational, or similar program in installments after the completion of the vocational, technical, educational, or similar program.

(B) If the defendant is on probation at the end of the vocational, technical, educational, or similar program required under subdivision (c)(1)(A) of this section, he or she shall be required to work in suitable employment for the remainder of his or her probation or for three (3) years, whichever occurs earlier; or

(2) Work consistently in suitable employment for the entire duration of his or her probation or for three (3) years, whichever occurs earlier.

History. Acts 1993, No. 531, § 7; 1993, No. 548, § 7; 1995, No. 998, § 10; 2005, No. 1994, § 477; 2007, No. 744, § 4; 2013, No. 1460, § 15; 2015, No. 1198, § 9; 2019, No. 910, §§ 942, 943.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Conditions of Probation or Supervised Release Prohibiting Contact with Minors or Frequenting Places Where Minors Congregate — State Cases. 4 A.L.R.7th Art. 3 (2015).

CASE NOTES

Probation Revocation.

Circuit court erred in expunging defendant's felony conviction under the Community Punishment Act, § 16-93-1201 et seq., because the court only referenced the original three-year probation order and not the post-revocation order imposing four years of probation, defendant failed to successfully complete probation under the original, revoked order, and the Act was explicitly made inapplicable to defendant's post-revocation sentence by the sentencing court. State v. Brown, 2019 Ark. 395, 590 S.W.3d 121 (2019).

16-93-1208. Post commitment transfer.

(a)(1)(A) Upon commitment of an eligible offender to the Division of Correction, the Division of Correction will transfer the eligible offender to a community correction program, when he or she reaches his or her transfer date, in accordance with the rules promulgated by the Board of Corrections and conditions set by the Parole Board.

(B) Legal custody of inmates transferred to the Division of Community Correction shall remain with the Division of Correction unless altered by court order.

(2) A person eligible for release from incarceration on parole may be placed in community correction programming while under parole supervision upon the recommendation of the condition by the releasing authority.

(b)(1) The Board of Corrections and the Division of Correction are authorized to release medical and psychological data in their possession to a community correction service provider concerning an eligible offender transferred to that community correction program.

(2) The community correction service provider shall use any medical or psychological data received from the Division of Correction and the

Board of Corrections in compliance with rules concerning the use of that data as adopted by the Board of Corrections.

History. Acts 1993, No. 531, § 8; 1993, No. 548, § 8; 1995, No. 1170, § 2; 2005, No. 186, § 2; 2005, No. 1994, § 288; 2019, No. 315, § 1315; 2019, No. 910, § 944.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(1)(A).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" throughout the section; and substituted "Division of Community Correction" for "Department of Community Correction" in (a)(1)(B).

16-93-1209. Liability.

The Division of Correction, the Board of Corrections, the Division of Community Correction, the Parole Board, and all governmental agencies and units utilizing eligible offenders in community correction programs as defined in this subchapter are immune from liability and suit for damages, and no tort action shall lie against the Division of Correction, the Board of Corrections, the Division of Community Correction, the Parole Board, and any governmental agency or unit or any of their employees because of any acts of eligible offenders utilized under the provisions of this subchapter.

History. Acts 1993, No. 531, § 9; 1993, No. 548, § 9; 2005, No. 1994, § 288; 2019, No. 910, § 945.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" twice and "Division of Community Correction" for "Department of Community Correction" twice.

16-93-1210. Sentence optional.

CASE NOTES

Cited: State v. Brown, 2019 Ark. 395, 590 S.W.3d 121 (2019).

Subchapter 16 — Transitional Housing Facilities

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-93-1601. Legislative intent.

It is the intent of the General Assembly to:

(1) Establish rules for facilities that house offenders who have been transferred, paroled, or placed on probation through the Arkansas criminal justice system in order to promote, protect, and improve the health, safety, and welfare of the citizens of the State of Arkansas; and

(2) Establish these rules in order to help reduce recidivism in our criminal justice system and to provide rules to protect the individuals in the programs and to protect the neighborhoods and communities in which the programs and facilities are located.

History. Acts 2005, No. 1378, § 1; 2019, No. 315, § 1316.

Amendments. The 2019 amendment substituted "rules" for "regulations" preceding the first occurrence of "to protect" in (2).

16-93-1602. Definitions.

As used in this subchapter:

(1) "Applicant" means any individual, business, or organization that has applied to receive an Arkansas transitional housing facility license;

(2) "License" means an Arkansas transitional housing facility license; and

(3)(A) "Transitional housing" means a program that provides housing for one (1) or more offenders who either have been transferred or paroled from the Division of Correction by the Parole Board or placed on probation by a circuit court or district court.

(B) An offender's home or the residence of an offender's family member shall not be considered a transitional housing facility as used in this subchapter.

History. Acts 2005, No. 1378, § 2; 2019, No. 910, § 946.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (3)(A).

16-93-1603. Powers and duties of the Board of Corrections.

(a) The Board of Corrections shall promulgate rules or develop administrative directives that set minimum standards for all transitional housing facilities in the State of Arkansas.

(b)(1) The Parole Board, a district court, or a circuit court shall not release a transferee, parolee, or probationer to a transitional housing facility as a resident unless the transitional housing facility provides a copy of a current license issued by the Division of Community Correction under § 16-93-1604.

(2) The transitional housing facility shall comply with all the standards set by the rules or administrative directives established by the Board of Corrections under subsection (a) of this section.

(c) The rules and administrative directives described in subsection (a) of this section shall include at least the following:

(1) Compliance with any local health and safety codes, including housing codes, fire codes, plumbing codes, and electrical codes, set by the jurisdiction or jurisdictions in which the transitional housing facility is located;

(2) Compliance with any local zoning ordinances;

(3) Compliance with any state and federal health and safety codes;

(4) Consideration of geographic dispersement of transitional housing facilities;

(5) Allowable ratio of transitional housing facility square footage to residents; and

(6) Allowable ratio of bathing facilities and restroom facilities to residents.

(d) Each transitional housing facility shall be licensed by its type.

(e) As used in this section, "transitional housing facility" includes a reentry, self-governed, or other type of post-incarceration housing as approved by the Board of Corrections and licensed by the division.

History. Acts 2005, No. 1378, § 2; 2009, No. 615, § 1; 2019, No. 159, § 1.

Amendments. The 2019 amendment inserted "or develop administrative directives" and deleted "shall" following "that" in (a); inserted "or administrative directives" in (b)(2); inserted "and administrative directives" in the introductory language of (c); rewrote (d); and added (e).

16-93-1604. Powers and duties of the Division of Community Correction.

(a) The Division of Community Correction shall implement the rules or administrative directives described in § 16-93-1603.

(b)(1) The division shall be responsible for the enforcement of the rules and administrative directives established by the Board of Corrections under § 16-93-1603.

(2) The division shall establish all procedures and forms that it deems necessary to implement the rules or administrative directives, and the procedures shall include, but not be limited to, the following:

(A) Creating state-issued Arkansas transitional housing facility licenses by type for applicant facilities that have met the standards established by the rules and administrative directives of the board;

(B) Establishing the process to be followed by an applicant in making application to the division to receive a license to operate an approved transitional housing facility, which shall include a reasonable application fee to be established by the board;

(C) Establishing procedures for the division to accept applications for facilities wishing to obtain a license to operate a transitional housing facility and to investigate whether applicants meet the

standards established by the rules and administrative directives of the board;

(D)(i) Establishing procedures for the division to notify an applicant when its application has been approved or denied.

(ii) All denials shall specify in writing the reason for the application's denial;

(E) Establishing procedures to investigate complaints that a licensed transitional housing facility is in violation of the standards established by the rules and administrative directives of the board;

(F) Establishing procedures for the division to suspend or revoke a license when a license holder is no longer in compliance with or violates the rules and administrative directives of the board; and

(G) Establishing procedures for the division to impose civil penalties for the operation of a transitional housing facility without a valid license issued by the division.

(c) The Director of the Division of Community Correction and the staff of the division shall provide administrative support to the board.

History. Acts 2005, No. 1378, § 2; 2009, No. 615, § 2; 2019, No. 159, § 2.

Amendments. The 2019 amendment inserted "or administrative directives" in (a) and the introductory language of (b)(2); deleted "on or before July 1, 2006" from the end of (a); inserted "and administrative directives" throughout (b); substituted "licenses by type" for "license" in (b)(2)(A); and made a stylistic change.

16-93-1605. License required.

(a) In order to operate a transitional housing facility for criminal offenders who have been transferred, paroled, or placed on probation through the Arkansas criminal justice system, the operator shall obtain a license by facility type from the Division of Community Correction.

(b)(1) Operation of a transitional housing facility without a license issued by the division shall result in the imposition of civil penalties against the operator by the division.

(2) Civil penalties for operation of a transitional housing facility without a valid license shall not exceed five hundred dollars ($500) per day for each day the violation continues.

(3) However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation.

(c) A criminal offender who has been transferred, paroled, or placed on probation through the Arkansas criminal justice system shall not be sent via court order to a transitional housing facility that is not properly licensed by the division.

History. Acts 2009, No. 615, § 3; 2019, No. 159, § 3.

Amendments. The 2019 amendment inserted "by facility type" in (a).

CHAPTER 95

INTERSTATE AGREEMENT ON DETAINERS

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-95-101. Agreement on Detainers.

CASE NOTES

Untried Indictment.

Circuit court erred in granting defendant's motion to dismiss all pending criminal actions because the detainer lodged by the sheriff's department was not based on an untried information, and thus defendant could not have availed himself of the 180-day speedy trial provision in the Interstate Agreement on Detainers (IAD), or the IAD's relevant dismissal provisions. It would be amending the statute to permit an arrest warrant to trigger the speedy trial provision in Article III of the IAD. State v. Higginbotham, 2020 Ark. 415, 612 S.W.3d 164 (2020).

16-95-105. Escape — Penalty.

Any prisoner who shall escape from custody while in another state or jurisdiction pursuant to the Agreement on Detainers shall be guilty of a felony and upon conviction shall be sentenced to a term of not less than three (3) years nor more than five (5) years in the Division of Correction.

History. Acts 1971, No. 705, § 5; A.S.A. 1947, § 43-3205; Acts 2019, No. 910, § 947.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction".

16-95-107. Administration.

The Director of the Division of Correction or his or her designee is authorized to serve as central administrator of, and information agent for, the Agreement on Detainers.

History. Acts 1971, No. 705, § 7; A.S.A. 1947, § 43-3207; Acts 2017, No. 305, § 2.

Amendments. The 2017 amendment substituted "or his or her designee is" for "is designated and".

CHAPTER 96

PROCEEDINGS IN INFERIOR COURTS

Subchapter 5 — Appeals to Circuit Court

16-96-501. [Superseded.]

Publisher's Notes. The Publisher's Note is being set out to reflect its revision.

See now Arkansas Rule of Criminal Procedure 36(a). This section was derived from Acts 1945, No. 197, § 2; A.S.A. 1947, § 44-502.

16-96-505. [Superseded.]

Publisher's Notes. The Publisher's Note is being set out to reflect its revision.

This section was superseded by former Arkansas Inferior Court Rule 9. See Bocksnick v. City of London, 308 Ark. 599, 825 S.W. 2d 267 (1992); see now Ark. R. Crim. P. 36. The section was derived from Acts 1905, No. 151, § 2, p. 375; C. & M. Dig., § 3383; Pope's Dig., § 4226; A.S.A. 1947, § 44-505.

16-96-507. Trial de novo.

CASE NOTES

Appellate Jurisdiction.

Circuit court clearly erred when it found that it could not rule on defendant's constitutional challenge to a city ordinance; although defendant had not raised the claim in the municipal court, appeals from a municipal court to circuit court are tried de novo under § 16-96-507, defendant was permitted to raise an argument for the first time on de novo review, and it was undisputed that he had raised the constitutional claim before the circuit court. Wright v. City of Bearden, 2017 Ark. App. 534, 532 S.W.3d 611 (2017).

CHAPTER 97

SENTENCING

16-97-101. Bifurcated sentencing procedures.

CASE NOTES

Analysis

Construction.
Alternative Sentences.
Voir Dire.

Construction.

The permissive tone of the language in subdivision (4) is unmistakable in that the trial court has discretion and "may" give the alternative sentence instruction. Hayes v. State, 2018 Ark. App. 158, 544 S.W.3d 587 (2018).

Alternative Sentences.

Defendant was charged as a habitual offender, having been previously convicted of four felonies, and the jury convicted him of a Class D felony for possessing a usable amount of cocaine, and thus the jury could

have imposed punishment within a range of zero years to not more than 15 years in prison; the circuit court explicitly considered defendant's criminal history and determined that an alternative sentence of probation would not be appropriate, and this was not an abuse of discretion, but an exercise of it. Wells v. State, 2017 Ark. App. 174, 518 S.W.3d 106 (2017).

Alternative sentence instruction was requested at the outset of sentencing, the trial court replied that it usually waited until the end of such proceedings to consider it, and when requested at the end, the trial court rejected it, and thus the trial court did exercise its discretion and no abuse of discretion was found. Moreover, defendant could not demonstrate prejudice, as the jury sentenced him for Class B felony first-degree battery to the maximum prison term, plus a $10,000 fine, and it strained credulity to argue that the jury would have recommended probation had it been given the option. Hayes v. State, 2018 Ark. App. 158, 544 S.W.3d 587 (2018).

Section 16-90-107(d) did not apply to defendant's case where the jury fixed his sentences at 20 years' imprisonment on a battery count and 10 years' imprisonment on a firearm count, recommended the terms be served consecutively, and its recommendation of an alternative sentence of probation was not binding on the court. McElroy v. State, 2018 Ark. App. 342, 553 S.W.3d 182 (2018).

Circuit court did not err in denying defendant's request for an alternative sentencing instruction; the circuit court considered that defendant had now been convicted of three counts of sexual assault against very young children, and prejudice could not be shown, as the jury imposed a sentence more severe than the minimum sentencing option, indicating the jury would not have imposed an alternative sentence if provided that option. Mondy v. State, 2019 Ark. App. 290, 577 S.W.3d 460 (2019).

Circuit court did not abuse its discretion in refusing to instruct the jury to consider probation as an alternative sentence given the fact that defendant was an habitual offender; moreover, defendant could not demonstrate prejudice because the jury recommended the maximum 20-year sentence. Huggins v. State, 2021 Ark. App. 218 (2021).

Voir Dire.

Circuit court did not violate defendant's right to a bifurcated trial when it included the word "feloniously" in the description of the charges read during voir dire; the court had considered the issue, decided it was necessary to inform the jury of the nature of the charges as required by Ark. R. Crim. P. 32.2, and provided a cautionary statement after reading the information so as to limit any prejudice. Hall v. State, 2018 Ark. App. 411, 558 S.W.3d 399 (2018).

16-97-103. Evidence.

CASE NOTES

Analysis

Admissibility.
Character Evidence.
Criminal History.
Discretion of Court.
Prejudicial Error.
Prejudicial Error Not Shown.
Victim Impact Evidence.

Admissibility.

Trial court did not abuse its discretion in admitting on-line chats and photographs depicting snuff sexual acts found on defendant's computer in the sentencing phase of his jury trial where the photos were the best method for the jury to gauge the veracity of defendant's attempts to downplay his activities, and they directly challenged witness testimony about defendant's care for his disabled wife and his good reputation in the community. Shreck v. State, 2016 Ark. App. 374, 499 S.W.3d 677 (2016).

In the sentencing hearing for defendant's convictions under § 5-27-602, the circuit court did not abuse its discretion in admitting testimony from defendant's former stepdaughter in which she identified herself and her sister in photographs found at defendant's residence and testified about defendant's past molestation of her when she was a child many years earlier; defendant's history of attraction to

underage girls was relevant to his character and the crimes for which he was convicted. Antoniello v. State, 2018 Ark. App. 105, 542 S.W.3d 878 (2018).

In defendant's sentencing trial following his guilty plea to first-degree murder, the circuit court properly admitted defendant's letter requesting the proceeds of his wife's life insurance policy because it was relevant to his guilt and to rebut his argument that he had accepted responsibility for his actions or had exhibited remorse where it suggested a possible financial motive for his wife's murder; while the jury might have negatively viewed his desire to receive his wife's life insurance proceeds, the impact did not substantially outweigh its probative value since it provided evidence of his motive for the murder and displayed his conduct after the murder, and the jury could weigh both in considering his request for a lighter sentence. Burnell v. State, 2020 Ark. 244, 602 S.W.3d 115 (2020).

In the jury sentencing trial after defendant pled guilty to aggravated robbery, the trial court did not err in allowing the State to call a detective and defendant's sister-in-law to testify about two crimes with which defendant had been charged but not convicted because that evidence showed that the robbery for which defendant was convicted was not an isolated incident and that defendant engaged in a pattern of criminal behavior relevant to the jury's determination of an appropriate sentence. Under this section, certain evidence is admissible at the sentencing phase that would not have been admissible at the guilt-innocence phase; and even if the introduction of the evidence was in error, there was no prejudice because defendant received a sentence within the statutory range short of the maximum. Thomas v. State, 2020 Ark. App. 357, 605 S.W.3d 261 (2020).

Character Evidence.

Trial court did not err in permitting questions regarding defendant's past behavior in the sentencing phase of his murder trial where he posed a broad question regarding his aggressiveness, thereby opening the door to questions regarding specific instances in which he had displayed aggression. Kinsey v. State, 2016 Ark. 393, 503 S.W.3d 772 (2016).

Circuit court properly admitted into evidence, during the sentencing phase of defendant's trial, conversations regarding "snuff" sex; while the evidence was obviously prejudicial to defendant, the evidence was both relevant and not unduly prejudicial. Defendant was convicted of conspiracy to commit rape of two minor children and he not only expressed his interest in snuff sex during the planning of the act with an undercover police officer, he also indicated that he was interested in performing it with minors. Shreck v. State, 2017 Ark. 39, 510 S.W.3d 750 (2017).

Trial court misapplied the law by overruling defendant's objection at sentencing to admission of evidence concerning nude images found on his computer without first engaging in the required Ark. R. Evid. 403 inquiry; from the trial court's comments from the bench in response to defendant's objection, it was apparent that the trial court was under the erroneous impression that Rule 403 did not apply at the sentencing stage of the proceedings. Peebles v. State, 2019 Ark. App. 483, 588 S.W.3d 355 (2019).

Criminal History.

Circuit court did not abuse its discretion in allowing evidence of defendant's previous convictions to be introduced during the sentencing phase after he was convicted of a single misdemeanor count of harassment; the circuit court did not act improvidently, thoughtlessly, or without due consideration in deciding to admit the evidence, it recognized that the jury could give the evidence whatever weight it chose, and it acknowledged the defense's prerogative to argue what weight the jury should give the evidence. Rose v. State, 2018 Ark. App. 446, 558 S.W.3d 415 (2018).

Circuit court did not abuse its discretion in admitting the Department of Correction pen pack and an uncertified copy of a court of appeals opinion for sentencing-enhancement purposes; although the pen pack incorrectly reflected a guilty plea to two prior felonies, it included defendant's prior convictions, offense dates, sentencing dates, felony classifications, and sentences for each conviction, and the appellate opinion showed that the conviction and sentence were affirmed. Although neither of the documents strictly complied with § 5-4-504(b), the documents did satisfy the circuit court beyond a reasonable

doubt under § 5-4-504(a) that defendant had been found guilty of the prior felonies. Rayburn v. State, 2019 Ark. 254, 583 S.W.3d 385 (2019).

Discretion of Court.

Evidence of defendant's prior conduct, whether charged or uncharged, could constitute either relevant character evidence or evidence of an aggravating circumstance admissible during the sentencing phase of the trial, and there was no merit to an appeal on this issue. Huggins v. State, 2021 Ark. App. 218 (2021).

Prejudicial Error.

Circuit court erred in resentencing defendant to life in prison after his original life-without-parole sentence for juvenile crimes was vacated due to Miller v. Alabama, 567 U.S. 460 (2012), because evidence of defendant's original sentence had no probative value and was inherently prejudicial. The jury not only could have had a diminished sense of responsibility, but also might have improperly considered the procedural history of the case in determining the appropriate punishment, particularly given the testimony of the victim's family as to the adverse effect that the overturning of defendant's sentence and the resentencing trial had on them. Kitchell v. State, 2020 Ark. 102, 594 S.W.3d 848 (2020).

Prejudicial Error Not Shown.

Even if the circuit court erred in the sentencing hearing in failing to exclude the screenshots of the text messages between the undercover officer and the defendant, no prejudice was shown and any error was harmless; defendant had already pleaded guilty to the crimes and a defendant who has received a sentence within the statutory range short of the maximum sentence cannot show prejudice from the sentence itself. Montgomery v. State, 2019 Ark. App. 376, 586 S.W.3d 187 (2019).

Victim Impact Evidence.

In the sentencing phase, allowing the testimony of the child's mother that her father's abuse of her daughter had caused tremendous suffering to her family was not error where defendant had not raised a specific objection to the statement at trial, and the testimony was relevant to show the impact the offense had on her family and was relevant to sentencing. Caple v. State, 2020 Ark. 340, 609 S.W.3d 630 (2020).

Cited: Peer v. State, 2020 Ark. App. 181, 598 S.W.3d 59 (2020).

CHAPTER 98

TREATMENT FOR DRUG ABUSE

SUBCHAPTER.

Subchapter 2 — Pretrial or Posttrial Treatment, Intervention, and Diversion Programs

SECTION.

16-98-201. Qualifications — Waiver.

Any judicial district, with the agreement of the parties, may establish a program whereby a defendant may be transferred to a pretrial or post-trial treatment program for drug abuse, provided that:

(1) The treatment program is at least one (1) year in length and meets the minimum standards of treatment promulgated by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(2) The charge or charges against the defendant carries a punishment which may be suspended;

(3) The defendant waives his or her rights to a speedy trial and such other rights as are agreed to by the parties and executes a consent for a limited release of confidential information regarding treatment permitting the judge, the prosecutor, and the defense attorney access to information relating to attendance, attitude, participation, and results of drug screens; and

(4)(A) The defendant is eighteen (18) years of age or older.

(B) This provision may be waived with the consent of the prosecuting attorney.

History. Acts 1994 (2nd Ex. Sess.), No. 53, § 1; 2013, No. 1107, § 14; 2017, No. 913, § 44.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" in (1).

Subchapter 3 — Arkansas Drug Court Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-98-303. Drug court programs authorized.

(a)(1) Each judicial district of this state is authorized to establish a drug court program under this subchapter.

(2) A drug court established under this subchapter shall be approved under § 16-10-139.

(3)(A) A drug court program may be preadjudication or post-adjudication for an adult offender or a juvenile offender.

(B) A juvenile drug court program or services may be used in a delinquency case or a family in need of services case.

(C) A juvenile drug court program or services may be used in a dependency-neglect case under § 9-27-334.

(4) Notwithstanding the authorization described in subdivision (a)(1) of this section, a judge of a circuit court, drug court, or juvenile division of circuit court may not order any services or treatment under subsection (b) of this section or § 16-98-305 unless:

(A) An administrative and programmatic appropriation has been made for those purposes;

(B) Administrative and programmatic funding is available for those purposes; and

(C) Administrative and programmatic positions have been authorized for those purposes.

(5) As determined by the Division of Community Correction, an adult drug court program established under this section shall target high-risk offenders and medium-risk offenders.

(b)(1) A drug court program shall incorporate services from the Division of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(2) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, and subject to the requirements of eligibility as defined in § 16-93-1202, the Division of Community Correction:

(A) Shall:

(i) Establish standards regarding the classification of a drug court program participant as a high-risk offender or medium-risk offender;

(ii) Provide positions for persons to serve as probation officers, drug counselors, and administrative assistants;

(iii) Provide for drug testing for drug court program participants;

(iv) Provide for intensive outpatient treatment for drug court program participants;

(v) Provide for intensive short-term and long-term residential treatment for drug court program participants; and

(vi) Develop clinical assessment capacity, including drug testing, to identify a drug court program participant with a substance addiction and develop a treatment protocol that improves the drug court program participant's likelihood of success; and

(B) May:

(i) Provide for continuous alcohol monitoring for drug court program participants, including a minimum period of one hundred twenty (120) days; and

(ii) Develop clinical assessment capacity, including continuous alcohol monitoring, to identify a drug court program participant with a substance addiction and develop a treatment protocol that improves the drug court program participant's likelihood of success.

(3) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the department shall:

(A) Provide positions for persons to serve as drug counselors and administrative assistants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(B) Provide for drug testing for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(C) Provide for intensive outpatient treatment for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(D) Provide for intensive short-term and long-term residential treatment for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(E) Certify and license treatment providers and treatment facilities that serve drug court program participants;

(F) Provide and oversee residential beds for drug court programs;

(G) Oversee catchment area facilities for drug court programs;

(H) Act as a liaison between the courts and drug court program participants; and

(I) Oversee performance standards for residential and long-term facilities providing services to drug court programs.

(4) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Administrative Office of the Courts shall:

(A) Provide state-level coordination and support for drug court judges and their programs;

(B) Administer funds for the maintenance and operation of local approved drug court programs;

(C) Provide training and education to drug court judges and other professionals involved in drug court programs;

(D) Operate as a liaison between drug court judges and other state-level agencies providing services to drug court programs; and

(E) Develop criteria for determining new drug court locations that take into account:

(i) The current size of the defendant population that meets the criteria for drug court participation;

(ii) Recent trends indicating an increasing defendant population that meets the criteria for drug court participation;

(iii) Existing drug treatment programs currently in place and operating through the courts, the county jail, or the Division of Correction; and

(iv) The drug court program's use of evidence-based practices by key partners involved in the prospective drug court including those to assess the needs of drug court participants in order to effectively target programming toward high-risk participants.

(c)(1) A drug court program shall not be available to any defendant who:

(A) Has a pending charge for a violent felony against him or her;

(B) Has been convicted of a violent felony offense as defined in this subchapter or adjudicated delinquent as a juvenile of a violent felony offense; or

(C)(i) Is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(ii) The exclusion under subdivision (c)(1)(C)(i) of this section shall not apply to the offense of prostitution, § 5-70-102.

(2) Eligible offenses may be further restricted by the rules of a specific drug court program.

(3) Nothing in this subchapter shall require a drug court judge to consider or accept every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the drug court program.

(4) Any defendant who is denied entry to a drug court program shall be prosecuted as provided by law.

(d)(1) Drug court programs may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems.

(2) A drug court team shall be designated by a circuit judge assigned to manage the drug court docket and may include a circuit judge, a prosecuting attorney, a public defender or private defense attorney, one (1) or more addiction counselors, one (1) or more probation officers, one (1) or more private treatment provider representatives, and any other individual or individuals determined necessary by the drug court judge.

(3)(A) The administrative judge of the judicial district shall designate one (1) or more circuit judges to administer the drug court program.

(B) If a county is in a judicial district that does not have a circuit judge who is able to administer the drug court program on a consistent basis, the administrative plan for the judicial circuit required by Supreme Court Administrative Order No. 14 may designate a district court judge to administer the drug court program.

(e) Each judicial district may develop a training and implementation manual for drug court programs with the assistance of the:

(1) Department;

(2) Division of Elementary and Secondary Education;

(3) Adult Education Section;

(4) Division of Community Correction; and

(5) Administrative Office of the Courts.

(f) A Division of Drug Court Programs is created within the Administrative Office of the Courts. The position of Drug Court Coordinator is created within the Division of Drug Court Programs, and the Drug Court Coordinator shall:

(1) Provide assistance, counsel, and advice to the Specialty Court Program Advisory Committee;

(2) Serve as a coordinator between drug court judges, the Division of Community Correction, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, private treatment provider representatives, and public health advocates;

(3) Establish, manage, and maintain a uniform statewide drug court information system to track information and data on drug court program participants to be reviewed by the Specialty Court Program Advisory Committee;

(4) Train and educate drug court judges and drug court staff in those judicial districts maintaining a drug court program;

(5) Provide staff assistance to the Arkansas Drug Court Professionals Association;

(6) Oversee the disbursement of funds appropriated to the Administrative Office of the Courts for the maintenance and operation of local approved drug court programs based on a formula developed by the Administrative Office of the Courts and reviewed by the Specialty Court Program Advisory Committee; and

(7) Develop guidelines to be reviewed by the Specialty Court Program Advisory Committee to serve as a framework for developing effective local drug court programs and to provide a structure for conducting research and evaluation for drug court program accountability.

(g)(1) A drug court program judge, on his or her own motion or upon a request from an offender, may order dismissal of a case and the sealing of the record if:

(A) The offender has successfully completed a drug court program, as determined by the drug court program judge;

(B) The offender has received aftercare programming;

(C) The drug court program judge has received a recommendation from the prosecuting attorney for dismissal of the case and the sealing of the record; and

(D) The drug court program judge, after considering the offender's past criminal history, determines that dismissal of the case and the sealing of the record are appropriate.

(2)(A) Except as provided in subdivision (g)(2)(B) of this section, if the offender has pleaded guilty or nolo contendere to or has been found guilty of an offense falling within a target group under § 16-93-1202(10)(A)(i) in another Arkansas court, the drug court program judge may order sealing and dismissal of the offense falling within a target group with the written concurrence of the other Arkansas court.

(B) The following offenses are not eligible for sealing under subdivision (g)(2)(A) of this section:

(i) Residential burglary, § 5-39-201(a);

(ii) Commercial burglary, § 5-39-201(b);

(iii) Breaking or entering, § 5-39-202; and

(iv) The fourth and subsequent offense of driving while intoxicated, § 5-65-103.

(3) Unless otherwise ordered by the drug court program judge, sealing under this subsection shall be as described in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

History. Acts 2003, No. 1266, § 3; 2007, No. 1022, § 4; 2009, No. 1491, § 2; 2011, No. 570, §§ 113-115; 2011, No. 1137, § 3; 2013, No. 1107, § 15; 2013, No. 1460, § 16; 2015, No. 895, §§ 32-35; 2017, No. 423, § 27; 2017, No. 913, § 45; 2019, No. 910, §§ 948-952.

Amendments. The 2017 amendment by No. 423 inserted "and subject to the requirements of eligibility as defined in

§ 16-93-1202" in the introductory language of (b)(2).

The 2017 amendment by No. 913 substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" in (f)(2).

The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" throughout the section; substituted "Division of Correction" for "Department of Correction" in (b)(4)(E)(iii); substituted "Division of Elementary and Secondary Education" for "Department of Education" in (e)(2); and substituted "Adult Education Section of the Division of Workforce Services" for "Department of Career Education" in (e)(3).

16-98-306. Collection of data.

(a)(1) An approved drug court program shall collect and provide monthly data on drug court applicants and all participants as required by the Specialty Court Program Advisory Committee in accordance with the rules promulgated under § 10-3-2901.

(2) The data shall include:

(A) The total number of applicants;

(B) The total number of participants;

(C) The total number of successful applicants;

(D) The total number of successful participants;

(E) The total number of unsuccessful participants and the reason why each unsuccessful participant did not complete the drug court program;

(F) Information about what happened to each unsuccessful participant;

(G) The total number of participants who were arrested for a new criminal offense while in the drug court program;

(H) The total number of participants who were convicted of a new criminal offense while in the drug court program;

(I) The total number of participants who committed a violation of one (1) or more conditions of the drug court program and the resulting sanction;

(J) The results of the initial risk-needs assessment or other appropriate clinical assessment conducted on each participant;

(K) The total amount of time each program participant was in the drug court program; and

(L) Any other data or information as required by the Specialty Court Program Advisory Committee in accordance with the rules promulgated under § 10-3-2901.

(b) The data collected for evaluation purposes under subsection (a) of this section shall:

(1) Include a minimum standard data set developed and specified by the Specialty Court Program Advisory Committee; and

(2) Be maintained in the court files or be otherwise accessible by the courts and the Specialty Court Program Advisory Committee.

(c)(1) As directed by the Specialty Court Program Advisory Committee, after an individual is discharged either upon completion or termination of a drug court program, the drug court program shall conduct, as much as practical, follow-up contacts with and reviews of former

drug court participants for key outcome indicators of drug use, recidivism, and employment.

(2)(A) The follow-up contacts with and reviews of former drug court participants shall be conducted as frequently and for a period of time as determined by the Specialty Court Program Advisory Committee based upon the nature of the drug court program and the nature of the participants.

(B) The follow-up contacts with and reviews of former drug court participants are not extensions of the drug court's jurisdiction over the drug court participants.

(d) For purposes of standardized measurement of success of drug court programs across the state, the Specialty Court Program Advisory Committee shall adopt an operational definition of terms such as "recidivism", "retention", "relapses", "restarts", "sanctions imposed", and "incentives given" to be used in any evaluation and report of drug court programs.

(e) Each drug court program shall provide to the Specialty Court Program Advisory Committee all information requested by the Specialty Court Program Advisory Committee.

(f) The Division of Drug Court Programs, the Division of Community Correction, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, and the Arkansas Crime Information Center shall work together to share and make available data to provide a comprehensive data management system for the state's drug court programs.

(g) The Administrative Office of the Courts shall collect monthly data reports submitted by approved drug courts and provide the monthly data reports to the Specialty Court Program Advisory Committee.

(h) The Specialty Court Program Advisory Committee shall:

(1) Submit a report by July 1 of each year summarizing the data collected and outcomes achieved by all approved specialty courts; and

(2) Contract with a third-party evaluator every five (5) years to conduct an evaluation on the effectiveness of the specialty court program in complying with the key components of § 16-98-302(b).

History. Acts 2007, No. 1022, § 5; 2011, No. 570, § 116; 2015, No. 895, § 40; 2017, No. 253, § 2; 2017, No. 913, § 46; 2021, No. 58, § 2.

Amendments. The 2017 amendment by No. 253 substituted "Specialty Court Program Advisory Committee" for "Division of Drug Court Programs" at the end of (e).

The 2017 amendment by No. 913 substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" in (f).

The 2021 amendment substituted "specialty courts" for "drug courts" in (h)(1); and, in (h)(2), substituted "five (5) years" for "three (3) years" and "specialty court" for "drug court".

CHAPTER 99

PERFORMANCE INCENTIVE FUNDING FOR RECIDIVISM AND CRIME REDUCTION

SUBCHAPTER.
1. Performance Incentive Act of 2011.

Subchapter 1 — Performance Incentive Act of 2011

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-99-101. Purpose and intent.

(a) Both state and local agencies that implement criminal justice practices resulting in outcomes that reduce commitments to the Division of Correction should be rewarded.

(b) If a state agency, county, or judicial district has implemented proven risk-reduction strategies that reduce the number of offenders returning to the Division of Correction with no resultant increase in the crime rate; then, in order to reward the state agency, county, or judicial district and as an incentive to encourage similar practices elsewhere, the state agency, county, or judicial district should receive a monetary reward to continue those practices.

(c) The award would represent a portion of the monetary savings from the costs that would have been incurred had the state agency, county, or judicial district not reduced its impact on the Division of Correction.

(d) The goal of this subchapter is to align state and local fiscal incentives by rewarding the Division of Community Correction, county governments, and judicial districts for each entity's role in reducing its impact on the Division of Correction.

History. Acts 2011, No. 570, § 117; 2019, No. 910, § 953.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" throughout the section; and substituted "Division of Community Correction" for "Department of Community Correction" in (d).

16-99-102. Program authorized — Administration.

(a) Costs averted due to a reduction in commitments to the Division of Correction or a reduction in the period of time served in the Division of Correction, to the extent possible, shall be reinvested into those state agencies, counties, or judicial districts as an incentive to further the crime and recidivism reduction strategies being employed.

(b) The Division of Community Correction shall be the recipient of incentive funds upon meeting the requirements set out in this subchapter.

(c)(1) Counties, multicounty partnerships, and judicial districts shall be eligible to apply for participation in the performance incentive funding program set out in this subchapter on the reduction in the Division of Correction's population.

(2) Participation in the program will be determined through a competitive grant process.

(d) The Board of Corrections shall have the authority to manage the program and administer the grant funds to appropriate applicants and the Division of Community Correction.

(e)(1) Subject to the available funding, the Division of Community Correction shall manage and administer grant funds to itself and counties, multicounty partnerships, and judicial districts in order to implement the policies and programs authorized by this program.

(2) These shall be one-time-only grants not contingent on measured performance.

(3) All future funding under this section shall be tied to measured performance.

History. Acts 2011, No. 570, § 117; 2019, No. 910, § 954.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

16-99-103. Application.

(a)(1) The Division of Community Correction shall receive additional funding for committing to a reduction in the number of probation revocations that result from a technical violation or a new crime.

(2) The baseline for comparing probation revocation data shall be based on the number of probation revocations and expected length of stay.

(3) In order to qualify for the additional monetary incentives under this subchapter, the felony conviction rate for probationers must remain stable or decrease from the previous year.

(4) Each year the Division of Community Correction shall receive additional funds for reducing the net impact of revocations on the Division of Correction.

(5) The Division of Community Correction shall promulgate rules for the distribution and use of incentive funds that it receives, requiring that:

(A) No less than one-third (⅓) of the funds received each year are distributed to the individual probation or parole areas responsible for the revocation reductions while maintaining or improving public safety; and

(B) All of the funds received by the Division of Community Correction are invested in programs and practices designed to reduce recidivism.

(b)(1) A competitive grant process will distribute grants to five (5) individual counties, multicounty partnerships, or judicial districts that meet criteria established to improve public safety and reduce their net impact on the Division of Correction.

(2) The Board of Corrections shall have the authority to:

(A) Manage the competitive grant process;

(B) Determine appropriate criteria;

(C) Award grants; and

(D) Collect and evaluate the data from all grantee sites.

(3) Applications can come from:

(A) Individual counties;

(B) Multicounty partnerships; or

(C) Judicial districts.

(4) Four (4) of the five (5) grants shall be awarded to the counties, multicounty partnerships, or judicial districts with the largest number of annual Division of Correction commitments that meet the program criteria and submit acceptable applications.

(5) One (1) grant shall be awarded to a county, multicounty partnership, or judicial district representing a rural region of the state, notwithstanding the number of Division of Correction commitments from the applicant so long as the program criteria are met and the application is acceptable.

(6) Each year, the grant recipient shall receive additional funds equal to one-half (½) of the averted costs for reducing the net impact of its sentences on the Division of Correction.

(7) The baseline for comparing the net impact of sentences shall be based on the number of admissions and expected length of stay.

(8) In order to qualify for the additional monetary incentives under this subchapter, the net impact of the county's, and multicounty's, judicial district's above-guidelines sentences, based on admissions and expected length of stay, must remain stable or decrease from the previous year.

(9) The board shall promulgate rules for the distribution and use of incentive funds to successful applicants.

History. Acts 2011, No. 570, § 117; 2019, No. 315, §§ 1317, 1318; 2019, No. 910, §§ 955-958.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in the introductory language of (a)(5) and in (b)(9).

The 2019 amendment by No. 910 substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" throughout the section.

16-99-104. Implementation.

The Board of Corrections shall:

(1) Establish rules for counties, multicounty partnerships, or judicial districts to apply for funds under this subchapter;

(2) Calculate and determine the baseline for the Division of Community Correction's revocation rate and for the Division of Correction's commitments' length of stay for evaluation purposes; and

(3) Calculate the averted costs to determine the amount to redirect to successful applicants who qualify for funds awarded under the performance incentive funding program.

History. Acts 2011, No. 570, § 117; 2019, No. 315, § 1319; 2019, No. 910, § 959.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (1).

The 2019 amendment by No. 910 substituted "Division of Community Correction's" for "Department of Community Correction's" and "Division of Correction's" for "Department of Correction's" in (2).

16-99-105. Reporting and data collection.

(a)(1) The Division of Community Correction shall provide data and information as requested by the Board of Corrections.

(2) That data and information shall include without limitation:

(A) The total number of probationers from each of the Division of Community Correction's individual probation or parole areas for the current year and previous years, as available;

(B) The total number of probation revocations, including revocations that result from violations and from new crimes for the current year and previous years, as available;

(C) The total number of new felony convictions and the rate of new felony convictions from each of the Division of Community Correction's individual probation or parole areas for the current year and previous years, as available;

(D) The amount of grant funds distributed to each individual probation or parole areas; and

(E) The evidence-based programs established or enhanced by the Division of Community Correction as part of its effort to reduce revocations and improve public safety and any subsequent evidence-based programs that contribute to the outcomes of the performance incentive funding program under this subchapter.

(b) Each grantee shall provide data and information as requested by the board, including without limitation:

(1) The list of counties, if in a multicounty partnership, participating;

(2) The amount of grant funds distributed under this subchapter to each county, multicounty partnership, or judicial district; and

(3) The programs established or enhanced as part of each applicant's successful grant proposal and any subsequent evidence-based programs that contribute to the outcomes of the program under this subchapter.

(c) The board shall report all data, findings, and recommendations annually for improvement to the:

(1) Governor;

(2) Chief Justice of the Supreme Court;

(3) Director of the Administrative Office of the Courts;

(4) Speaker of the House of Representatives;

(5) President of the Senate;

(6) Chair of the House Committee on Judiciary; and

(7) Chair of the Senate Committee on Judiciary.

(d)(1) The board's report shall include an analysis of the impact of the performance incentive funding program.

(2) This analysis shall include without limitation the effect, compared to baseline, on net Division of Correction bed usage by the Division of Community Correction and by all county grantees, as well as Division of Correction admissions and lengths-of-stay, moneys paid out, revocation rates and new crime conviction rates for the Division of Community Correction, and guidelines compliance for participating counties.

(3) The board shall provide analyses on an area-by-area basis for the Division of Community Correction performance incentive funding program and on a county-by-county, multicounty-partnership, or judicial-district basis for the local performance incentive funding program.

(e) The board shall conduct a study and make recommendations, as needed, to those persons or entities listed in subsection (b) of this section, three (3) years after the implementation of the program established under this subchapter and every third year thereafter to determine whether to change the baseline year that determines revocation reduction benchmarks.

History. Acts 2011, No. 570, § 117; 2019, No. 910, §§ 960-964.

Amendments. The 2019 amendment substituted "Division of Community Correction" for "Department of Community Correction" and "Division of Correction" for "Department of Correction" throughout the section.

CHAPTER 100

MENTAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.
16-100-101. Definitions.

16-100-101. Definitions.

As used in this chapter:

(1) "Evidence-based practices" means supervision, policies, procedures, and practices proven through research to reduce recidivism;

(2) "Mental illness" means a condition of a person who has or has had in the past a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified by the Diagnostic and Statistical Manual of Mental Disorders as it existed on January 1, 2017, that has resulted in functional impairment that substantially interferes with or limits one (1) or more major life activities; and

(3) "Validated risk-needs assessment" means a determination of a person's risk of reoffending and the needs that, when addressed, reduce the risk of reoffending through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior.

History. Acts 2017, No. 506, § 1.

Subchapter 2 — Mental Health Specialty Courts

SECTION.
16-100-201. Authorization — Evaluation — Restriction on services and treatment.
16-100-202. Goals of mental health specialty court program.
16-100-203. Establishment of mental health specialty court.
16-100-204. Administration of mental health specialty court program.
16-100-205. Eligible persons — Waiver of certain rights.
16-100-206. Transfer of cases.
16-100-207. Mental health treatment under program — Failure to comply with program.
16-100-208. Completion of program — Dismissal of case — Sealing of record.
16-100-209. Costs and fees.

16-100-201. Authorization — Evaluation — Restriction on services and treatment.

(a) A judicial district may establish a mental health specialty court program, which shall consist of at least one (1) mental health specialty court, subject to approval by the Supreme Court in the administrative plan submitted under Supreme Court Administrative Order No. 14.

(b) A mental health specialty court program authorized under this subchapter is also subject to evaluation by the Specialty Court Program Advisory Committee under § 16-10-139.

(c)(1) A mental health specialty court may not order any services or mental health treatment under this subchapter unless:

(A) An administrative and programmatic appropriation has been made for services or mental health treatment under this subchapter;

(B) Administrative and programmatic funding is available for services or mental health treatment under this subchapter; and

(C) Administrative and programmatic positions have been authorized for services or mental health treatment under this subchapter.

(2) If the requirements of subdivision (c)(1) of this section are not met, a mental health specialty court may still order services or mental health treatment if the provider waives payment, or if the mental health specialty court program participant has private insurance that will pay for the services or mental health treatment.

History. Acts 2017, No. 506, § 1.

16-100-202. Goals of mental health specialty court program.

(a) The goals of a mental health specialty court program established under this subchapter include the following:

(1) Integration of mental health treatment with criminal justice system case processing;

(2) Use of a nonadversarial approach in which the prosecution and defense promote public safety while protecting the right of a mental health specialty court program participant to due process;

(3) Early identification of eligible mental health specialty court program participants, with the use of a validated risk-needs assessment, and prompt placement of eligible mental health specialty court program participants;

(4) Access to a continuum of treatment, rehabilitation, and related services for mental health specialty court program participants;

(5) Periodic testing for alcohol and controlled substances at the discretion of the mental health specialty court, if a mental health specialty court program participant has been identified as a user of alcohol or controlled substances;

(6) A coordinated strategy among the mental health specialty court judge, prosecution, defense, and mental health treatment providers to govern the compliance of a mental health specialty court program participant with the mental health specialty court program;

(7) Ongoing judicial interaction with each mental health specialty court program participant;

(8) Monitoring and evaluation of the achievement of mental health specialty court program goals and effectiveness;

(9) Continuing interdisciplinary education to promote effective planning, implementation, and operation of the mental health specialty court program; and

(10) Development of partnerships with public agencies and community-based organizations to generate local support and enhance mental health specialty court program effectiveness.

(b) Mental health specialty court program success is determined by the rate of recidivism of all mental health specialty court program participants, including mental health specialty court program partici-

pants who do not graduate from the mental health specialty court program.

History. Acts 2017, No. 506, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General Assembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

16-100-203. Establishment of mental health specialty court.

(a) A mental health specialty court is a specialized court within the existing structure of the court system.

(b) A mental health specialty court program shall offer judicial monitoring of intensive mental health treatment and strict supervision of mental health specialty court program participants.

(c) The creation of a mental health specialty court and the appointment of a circuit judge to the mental health specialty court shall be approved by the administrative judge in each judicial circuit and made a part of the judicial circuit's administrative plan required by Supreme Court Administrative Order No. 14.

History. Acts 2017, No. 506, § 1.

16-100-204. Administration of mental health specialty court program.

(a) A mental health specialty court program may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems.

(b)(1) The administrative judge of the judicial district shall designate one (1) or more circuit judges to be mental health specialty court judges and to administer the mental health specialty court program.

(2) If a county is in a judicial district that does not have a circuit judge who is able to administer the mental health specialty court program on a consistent basis, the administrative plan for the judicial circuit required by Supreme Court Administrative Order No. 14 may designate a district court judge to be a mental health specialty court judge and to administer the mental health specialty court program.

(c) A mental health specialty court team shall be designated by a mental health specialty court judge and may include:

(1) A circuit judge;

(2) A prosecuting attorney;

(3) A public defender or private defense attorney;

(4) One (1) or more healthcare providers with experience in the field of mental health treatment;

(5) One (1) or more probation officers;

(6) One (1) or more private mental health treatment provider representatives with experience in the field of mental health treatment; and

(7) Any other individual determined necessary by the mental health specialty court judge.

(d) Each judicial district may develop a training and implementation manual for the mental health specialty court program with the assistance of the:

(1) Department of Human Services;

(2) Department of Health;

(3) Division of Community Correction;

(4) Administrative Office of the Courts; and

(5) Other federal, state, and local agencies, organizations, or entities with an established history of expertise in mental health conditions.

History. Acts 2017, No. 506, § 1.

16-100-205. Eligible persons — Waiver of certain rights.

(a) A person is eligible for participation in a mental health specialty court program if:

(1) The person has a mental illness;

(2) The person is charged with a criminal offense other than a criminal offense listed in subsection (b) of this section;

(3) The person waives his or her rights to a speedy trial and other rights as determined by the mental health specialty court and executes a consent for a limited release of confidential information regarding mental health treatment permitting the mental health specialty court, the prosecuting attorney, and the defense attorney access to information relating to attendance, attitude, participation, results of drug screens if ordered, and all pertinent medical records; and

(4)(A) The person is eighteen (18) years of age or older.

(B) Subdivision (a)(4)(A) of this section may be waived with the consent of the prosecuting attorney.

(b) A person charged with one (1) or more of the following offenses is ineligible to participate in a mental health specialty court program:

(1) A serious felony involving violence as defined in § 5-4-501(c)(2);

(2) A felony offense that would require the person to register as a sex offender; or

(3) An offense specifically excluded by the rules of a specific mental health specialty court program.

(c) This subchapter does not require a mental health specialty court to consider or accept every person with a treatable mental health condition, regardless of the fact that the criminal offense for which the person is charged is eligible for consideration in the mental health specialty court program.

(d) A person who is denied entry into a mental health specialty court program is subject to prosecution for the criminal offense with which he or she was charged as provided by law.

(e) A mental health specialty court may require the circuit court clerk or probate clerk to submit to the Arkansas Crime Information

Center a copy of an order transferring a person to the mental health specialty court.

History. Acts 2017, No. 506, § 1.

16-100-206. Transfer of cases.

(a) A circuit court or district court that determines, on the circuit court's or district court's own motion or upon application by a person charged with but not yet convicted of a criminal offense in the court, that the person may be better served in a mental health specialty court program may transfer the case to the mental health specialty court if the person charged with the criminal offense would otherwise be eligible to enter into a mental health specialty court program.

(b)(1) The person charged with a criminal offense whose case the circuit court or district court is attempting to transfer to a mental health specialty court may oppose the transfer.

(2)(A) A person who opposes a transfer of his or her case to a mental health specialty court under this subsection shall be appointed counsel if he or she has not already retained counsel or had counsel retained for him or her by another person or entity.

(B) If after consulting his or her counsel the person still opposes the transfer of his or her case to a mental health specialty court, the case shall remain on the current docket and shall proceed under the normal course of that circuit court's or district court's docket.

History. Acts 2017, No. 506, § 1.

16-100-207. Mental health treatment under program — Failure to comply with program.

(a)(1) A mental health specialty court shall order mental health treatment for a mental health specialty court program participant for at least six (6) months.

(2) Any mental health treatment ordered under subdivision (a)(1) of this section shall meet the minimum standards of mental health treatment promulgated by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(b) A mental health specialty court program participant may be removed from a mental health specialty court program by the mental health specialty court following a hearing with notice and an opportunity for the mental health specialty court program participant to be heard, if:

(1) The mental health specialty court program participant:

(A) Knowingly fails to abide by the terms and conditions of the mental health specialty court program; or

(B) Is not suffering from a recognized mental illness in the opinion of a healthcare provider or mental health specialist assigned or ordered by the mental health specialty court to determine whether or

not the mental health specialty court program participant suffers from a recognized mental illness; or

(2) The mental health specialty court finds that retaining the mental health specialty court program participant in a mental health specialty court program does not serve the best interests of justice, the public, the state, or the mental health specialty court program participant.

(c) If a mental health specialty court program participant is removed from a mental health specialty court program for any of the reasons set out under subsection (b) of this section, the mental health specialty court program participant's case shall be transferred to the appropriate court having jurisdiction.

History. Acts 2017, No. 506, § 1.

16-100-208. Completion of program — Dismissal of case — Sealing of record.

(a) Upon the mental health specialty court's own motion or upon a request from a mental health specialty court program participant or his or her attorney, a mental health specialty court may order dismissal of the case against the mental health specialty court program participant and the sealing of the record if:

(1) The mental health specialty court program participant has successfully completed the mental health specialty court program, as determined by the mental health specialty court;

(2) The mental health specialty court program participant has received aftercare programming or a course of continuing mental health treatment if recommended by the mental health specialty court program participant's healthcare provider;

(3) The mental health specialty court has received a recommendation from the prosecuting attorney for dismissal of the case and the sealing of the record; and

(4) The mental health specialty court, after considering the mental health specialty court program participant's criminal history, determines that dismissal of the case and the sealing of the record are appropriate.

(b) Unless otherwise ordered by the mental health specialty court, sealing of the record under this section shall be as described in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(c) If a mental health specialty court program participant has successfully completed the program and has his or her case dismissed under this section, he or she may petition the mental health specialty court for relief from disability to restore the mental health specialty court program participant's right to purchase a firearm and to otherwise be removed from the Federal Bureau of Investigation's National Instant Criminal Background Check System database.

History. Acts 2017, No. 506, § 1.

16-100-209. Costs and fees.

(a) The mental health specialty court may order the mental health specialty court program participant to pay:

(1) Court costs as provided in § 16-10-305;

(2) Healthcare and treatment costs not otherwise covered by the health insurance of the mental health specialty court program participant;

(3) Drug testing costs;

(4) A mental health specialty court program user fee;

(5) Necessary supervision fees, including any applicable residential treatment fees;

(6) Any fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) that are to be paid to the Division of Community Correction;

(7) Global Positioning System monitoring costs; and

(8) Continual alcohol monitoring fees.

(b)(1) The mental health specialty court shall establish a schedule for the payment of costs and fees.

(2) The cost for health care, treatment, drug testing, continual alcohol monitoring if ordered, and supervision shall be set by the treatment and supervision providers respectively and made part of the order for payment of the mental health specialty court.

(3) Mental health specialty court user fees shall be set by the mental health specialty court.

(4) Health care, treatment, drug testing, continual alcohol monitoring if ordered, and supervision costs or fees shall be paid to the respective providers.

(5) Fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) shall be paid to the division.

(6)(A) All court costs and mental health specialty court program user fees assessed by the mental health specialty court shall be paid to the circuit court clerk or district court clerk, as applicable, for remittance to the county treasury under § 14-14-1313.

(B) All installment payments shall initially be deemed to be collection of court costs under § 16-10-305 until the court costs have been collected in full with any remaining payments representing collections of other fees and costs as authorized in this section and shall be credited to the county administration of justice fund and distributed under § 16-10-307.

(C) Mental health specialty court program user fees shall be credited to a fund to be known as the "mental health specialty court program fund" and appropriated by the quorum court for the county in which the mental health specialty court program participant committed the offense for which he or she is charged for the benefit and administration of the mental health specialty court program.

(7) Court orders for costs and fees shall remain an obligation of the mental health specialty court program participant with mental health specialty court monitoring until fully paid.

(c) All costs and fees under this section may be fully or partially waived by the mental health specialty court upon a showing of indigency.

History. Acts 2017, No. 506, § 1; 2019, No. 385, § 2.

Amendments. The 2019 amendment inserted "costs" in (a)(7).

CHAPTER 101

VETERANS TREATMENT SPECIALTY COURT PROGRAMS

16-101-101. Specialty court authorized — Program authorized — Evaluation — Restriction on services and treatment.

(a) A circuit court may establish a veterans treatment specialty court program, subject to approval by the Supreme Court in the administrative plan submitted under Supreme Court Administrative Order No. 14.

(b) A veterans treatment specialty court is a specialized court within the existing structure of the court system.

(c) The goals of the veterans treatment specialty court program shall be consistent with standards adopted by the United States Department of Justice and the National Association of Drug Court Professionals, as they existed on January 1, 2021.

(d) A veterans treatment specialty court program is subject to evaluation by the Specialty Court Program Advisory Committee under § 16-10-139.

(e)(1) A veterans treatment specialty court may not order any services, including mental health or substance use disorder treatment under this chapter unless:

(A) An administrative and programmatic appropriation has been made for the services;

(B) Administrative and programmatic funding is available for the services; and

(C) Administrative and programmatic positions have been authorized for the services.

(2) If the requirements of subdivision (e)(1) of this section are not met, a veterans treatment specialty court may still order services if the provider waives payment or if the specialty court participant has private insurance that will pay for the services.

History. Acts 2021, No. 58, § 3.

16-101-102. Administration of veterans treatment specialty court program.

(a) A veterans treatment specialty court program may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial system.

(b) Each veterans treatment specialty court shall develop a policy and procedure manual for the veterans treatment specialty court program.

(c) The veterans treatment specialty court program shall offer judicial monitoring with intensive substance use disorder treatment, mental health treatment, and strict supervision of high-risk, high-need defendants as determined by a validated risk-needs assessment tool.

(d)(1) A veterans treatment specialty court program team shall be designated by the veterans treatment specialty court judge to manage the veterans treatment specialty court docket.

(2) Veterans treatment specialty court team members shall include:

(A) A circuit judge or state district court judge;

(B) A prosecuting attorney;

(C) A public defender or private defense attorney;

(D) One (1) or more probation officers employed by the Division of Community Correction;

(E) One (1) or more treatment providers with experience in the fields of mental health and substance use disorder treatment;

(F) One (1) or more local law enforcement agency representatives;

(G) One (1) or more veterans justice outreach specialists; and

(H) Any other individuals determined necessary by the veterans treatment specialty court judge.

(e) A veterans treatment specialty court program may be pre-adjudication or post-adjudication.

(f) If the veterans treatment specialty court utilizes a case management system that allows for the collection and processing of data, the veterans treatment specialty court shall collect and provide monthly data on veterans treatment specialty court program applicants and all participants as required by the Specialty Court Program Advisory Committee in accordance with rules promulgated under § 10-3-2901.

History. Acts 2021, No. 58, § 3.

16-101-103. Eligibility.

A person is eligible for participation in a veterans treatment specialty court program if the person:

(1) Has a substance use disorder or mental health disorder;

(2) Is eighteen (18) years of age or older;

(3) Is a veteran or a service member of the United States Armed Forces or National Guard; and

(4) Agrees to comply with the policies and procedures developed by the veterans treatment specialty court.

History. Acts 2021, No. 58, § 3.

16-101-104. Costs and fees.

(a) The veterans treatment specialty court judge presiding over a veterans treatment specialty court program that has been approved by the Supreme Court may order a veterans treatment specialty court program participant to pay:

(1) Court costs as provided in § 16-10-305;

(2) Treatment costs;

(3) Drug testing costs;

(4) A veterans treatment specialty court program user fee;

(5) Necessary supervision fees, including any applicable residential treatment fees;

(6) A fee determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) that is to be paid to the Division of Community Correction;

(7) Global Positioning System monitoring costs; and

(8) Continuous alcohol monitoring fees.

(b)(1) The veterans treatment specialty court judge shall establish a schedule for the payment of veterans treatment specialty court costs and fees.

(2) The cost for treatment, drug testing, continuous alcohol monitoring if ordered, and supervision shall be set by the treatment and supervision providers and made part of the order of the veterans treatment specialty court judge for payment.

(3) Veterans treatment specialty court program user fees shall be set by the veterans treatment specialty court judge.

(4) The costs for treatment, drug testing, continuous alcohol monitoring if ordered, and supervision shall be paid to the respective providers.

(5)(A) All court costs and veterans treatment specialty court program user fees assessed by the veterans treatment specialty court judge shall be paid to the court clerk for remittance to the county treasury under § 14-14-1313.

(B) All installment payments shall initially be deemed to be collection of court costs under § 16-10-305 until the court costs have been collected in full with any remaining payments representing collections of other fees and costs as authorized in this section and shall be credited to the county administration of justice fund and distributed under § 16-10-307.

(C) Veteran treatment specialty court program user fees shall be credited to a fund known as the "veterans treatment specialty court program fund" and appropriated by the quorum court for the benefit and administration of the veterans treatment specialty court program.

(D) Court orders for costs and fees shall remain an obligation of the veterans treatment specialty court program participant and payment shall be monitored by the veterans treatment specialty court until fully made.

(E) Expenditures from the veteran treatment specialty court program fund shall require the approval of the veteran treatment specialty court and shall be authorized and paid by law concerning the appropriation and payment of county or municipal expenditures by the governing body or, if applicable, governing bodies, that contribute to the expenses of the circuit court.

(F)(i) Expenditures from the veterans treatment specialty court program fund shall be used solely for the support, benefit, and administration of the veterans treatment specialty court program.

(ii) Expenditures may be made for indirect expenses related to the veterans treatment specialty court program, including training and travel expenses, veterans treatment specialty court program user incentives, graduation costs, and supplies.

(6) Court orders for costs and fees shall remain an obligation of the veterans treatment specialty court participant and payment shall be monitored by the veterans treatment specialty court until fully made.

(c) A grant awarded to a veterans treatment specialty court program, as well as all memorials, honorariums, and other monetary gifts to the veterans treatment specialty court program shall be deposited into the veterans treatment specialty court program fund.

(d) A fee or costs under this section may be waived in whole or in part if the veterans treatment specialty court finds that the veterans treatment specialty court program participant subject to paying the fee or costs is indigent.

History. Acts 2021, No. 58, § 3.

16-101-105. Presiding judge.

(a) If a judicial district chooses to create and administer a veterans treatment specialty court, subject to Arkansas Constitution, Amendment 80, the administrative judge of the judicial district shall designate one (1) or more circuit judges to be the veterans treatment specialty court judges and to administer the veterans treatment specialty court program.

(b) If a county is in a judicial district that does not have a circuit judge who is able to administer the veterans treatment specialty court program on a consistent basis, the administrative plan for the judicial circuit required by Supreme Court Administrative Order No. 14 and the administrative plan for the district court pursuant to Supreme Court Administrative Order No. 18 may designate a state district court judge to be a veterans treatment specialty court judge and to administer the veterans treatment specialty court program.

History. Acts 2021, No. 58, § 3.

16-101-106. Completion of program — Dismissal of case — Sealing of record.

(a) A veterans treatment specialty court judge, on his or her own motion or upon request from a veterans treatment specialty court program participant, may order dismissal of a veterans treatment specialty court program participant's case if:

(1) The veterans treatment specialty court program participant has successfully completed the veterans treatment specialty court program, as determined by the veterans treatment specialty court judge;

(2) The veterans treatment specialty court judge has received a recommendation from the prosecuting attorney for dismissal of the veterans treatment specialty court program participant's case and the sealing of the record; and

(3) The veterans treatment specialty court judge, after considering the veterans treatment specialty court program participant's past criminal history, determines that the dismissal of the veterans treatment specialty court program participant's case and the sealing of the record are appropriate.

(b)(1) Except as provided in subdivision (b)(2) of this section, if the veterans treatment specialty court program participant has pleaded guilty or nolo contendere to or has been found guilty of an offense falling within a target group under § 16-93-1202(10)(A)(i) in another circuit court in this state, the veterans treatment specialty court judge may order dismissal of the veterans treatment specialty court program participant's case and the sealing of the record for an offense falling within the target group with the written concurrence of the other circuit court.

(2) The following offenses are not eligible for sealing under subdivision (b)(1) of this section:

(A) Residential burglary, § 5-39-201(a);

(B) Commercial burglary, § 5-39-201(b);

(C) Breaking or entering, § 5-39-202; and

(D) Driving or boating while intoxicated, § 5-65-103.

(c) Unless otherwise ordered by the veterans treatment specialty court judge, sealing under this subsection shall be as described in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

History. Acts 2021, No. 58, § 3.

CHAPTER 102

DWI/BWI SPECIALTY COURT PROGRAMS

16-102-101. Specialty court authorized — Program authorized — Evaluation — Restriction on services and treatment.

(a) A district court may establish a DWI/BWI specialty court program for persons convicted of driving or boating while intoxicated, § 5-65-103, subject to approval by the Supreme Court in the administrative plan submitted under Supreme Court Administrative Order No. 18.

(b) A DWI/BWI specialty court is a specialized court within the existing structure of the court system.

(c) The goals of the DWI/BWI specialty court program shall be consistent with standards adopted by the United States Department of Justice and recommended by the National Center for DWI Courts, as they existed on January 1, 2021.

(d) A DWI/BWI specialty court program authorized under this chapter is subject to evaluation by the Specialty Court Program Advisory Committee under § 16-10-139.

(e)(1) A DWI/BWI specialty court program may not order any services, including mental health or substance use disorder treatment under this chapter unless:

(A) An administrative and programmatic appropriation has been made for the services;

(B) Administrative and programmatic funding is available for the services; and

(C) Administrative and programmatic positions have been authorized for the services.

(2) If the requirements of subdivision (e)(1) of this section are not met, a DWI/BWI specialty court may still order the services if the provider waives payment or if the DWI/BWI specialty court program participant has private insurance that will pay for the services.

History. Acts 2021, No. 58, § 4.

16-102-102. Administration.

(a) A DWI/BWI specialty court program may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial system.

(b) Each DWI/BWI specialty court shall develop a policy and procedure manual for the DWI/BWI specialty court program.

(c) The DWI/BWI specialty court program shall offer judicial monitoring with intensive substance use disorder treatment and strict supervision of high-risk, high-need defendants, as determined by a validated risk-needs assessment tool, in cases of driving or boating while intoxicated, § 5-65-103.

(d)(1) The DWI/BWI specialty court shall have jurisdiction of a DWI/BWI specialty court program participant for sixteen (16) months from the date of sentencing to complete the DWI/BWI specialty court program in conformance with the standards adopted by the United

States Department of Justice and recommended by the National Center for DWI Courts, as they existed on January 1, 2021.

(2) In order for the DWI/BWI specialty court program participant to complete the DWI/BWI specialty court program and upon finding of good cause, the DWI/BWI specialty court may extend jurisdiction of the DWI/BWI specialty court program participant for an additional two (2) months.

(e)(1) A DWI/BWI specialty court program team shall be designated by the DWI/BWI specialty court judge to manage the DWI/BWI specialty court program docket.

(2) DWI/BWI specialty court program team members shall include:

(A) A district judge;

(B) A prosecuting attorney or city attorney;

(C) A public defender or private defense attorney;

(D) One (1) or more probation officers;

(E) One (1) or more treatment providers with experience in the fields of mental health or substance use disorders, or both;

(F) One (1) or more local law enforcement agency representatives; and

(G) Any other individuals determined necessary by the DWI/BWI specialty court program judge.

(f) A person is eligible for participation in a DWI/BWI specialty court program if:

(1) The person has a substance use disorder;

(2) The person is eighteen (18) years of age or older;

(3) The person has pled guilty or nolo contendere or has been found guilty of the offense of driving or boating while intoxicated, § 5-65-103, and is awaiting sentencing for the offense; and

(4) The person agrees to comply with the policies and procedures developed by the DWI/BWI specialty court program.

(g) Subject to § 5-65-108, probation and any other services ordered by the DWI/BWI specialty court shall be ordered after the person pleads guilty or nolo contendere to violating driving or boating while intoxicated, § 5-65-103.

(h) A DWI/BWI specialty court shall not reduce or dismiss a charge or conviction of driving or boating while intoxicated, § 5-65-107.

(i) If a DWI/BWI specialty court utilizes a case management system that allows for the collection and processing of data, the DWI/BWI specialty court shall collect and provide monthly data on DWI/BWI specialty court program applicants and all DWI/BWI specialty court program participants as required by the Specialty Court Program Advisory Committee in accordance with rules promulgated under § 10-3-2901.

History. Acts 2021, No. 58, § 4.

SUBTITLE 7. PARTICULAR PROCEEDINGS AND REMEDIES

CHAPTER 105

ABATEMENT OF NUISANCES

SUBCHAPTER.
5. Noise Pollution.

Subchapter 5 — Noise Pollution

SECTION.
16-105-502. Sport shooting ranges.

16-105-502. Sport shooting ranges.

(a) Notwithstanding any other provision of law to the contrary, a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution for noise or noise pollution resulting from the operation or use of the sport shooting range if the sport shooting range is in compliance with noise control ordinances of local units of government that applied to the sport shooting range and its operation at the time the sport shooting range was constructed and began operation.

(b) A person who operates or uses a sport shooting range is not subject to an action for nuisance, and no court of the state may enjoin the use or operation of a sport shooting range on the basis of noise or noise pollution, if the sport shooting range is in compliance with noise control ordinances of units of local government that applied to the sport shooting range and its operation at the time the sport shooting range was constructed and began operation.

(c) A person who subsequently acquires title to or who owns real property adversely affected by the use of property with a permanently located sport shooting range shall not maintain a nuisance action against the person who owns the sport shooting range to restrain, enjoin, or impede the use of the sport shooting range unless there has been a substantial change in the nature of the use of the sport shooting range or by a person using the sport shooting range.

(d) Rules adopted by any state agency for establishing levels of noise allowable in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this subchapter.

(e) Notwithstanding any other provision of law to the contrary, nothing in this subchapter shall be construed to limit civil liability except in the limited case of noise pollution.

History. Acts 1997, No. 602, § 2; 2019, No. 315, § 1320.

Amendments. The 2019 amendment deleted "or regulations" following "Rules" in (d).

CASE NOTES

Immunity from Suit.

Circuit court properly dismissed the neighbors' nuisance lawsuit against a charitable organization's operation of a shooting range on its property because the organization was statutorily immune from suit under this section, where no local noise control ordinances existed at the time the shooting range began operation, and the burden on the neighbors' use of their property, and its diminution in value, was insufficient to rise to the level of a taking under Ark. Const., Art. 2, § 22. 3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158, 2018 Ark. 91, 548 S.W.3d 137 (2018).

CHAPTER 106

ACTIONS BY OR AGAINST STATE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

16-106-111. Exception to judicial immunity — Definitions.

(a) The General Assembly finds that:

(1) The common law doctrine of judicial immunity from civil suit has been accepted by the courts under Peterson v. Judges of Jefferson County Circuit Court, 2014 Ark. 228 (per curiam) and Pierson v. Ray, 386 U.S. 547 (1967), and is state law; and

(2) An exception to this blanket grant of judicial immunity is necessary to protect the public from certain criminal and unethical acts committed by judges and justices.

(b) A person who has had an adverse decision against him or her in a court in this state may file a claim in the circuit court with jurisdiction against a judge or justice who made the adverse decision in the judge or justice's individual capacity if the judge or justice:

(1) Made or influenced the adverse decision as a result of bribery;

(2) Has been found guilty of, or pleaded guilty to, nolo contendere to, or the equivalent of nolo contendere to, a criminal offense for conduct constituting bribery in any state or federal court; and

(3) The bribery conviction described in subdivision (b)(2) of this section resulted from the conduct described in subdivision (b)(1) of this section.

(c) A person is entitled to the following remedies if he or she prevails on a claim under subsection (b) of this section:

(1) Costs;

(2) Damages, including without limitation punitive damages; and

(3) Attorney's fees.

(d) A prosecuting attorney may bring a cause of action under this section, and may, in his or her discretion, use any proceeds recovered in the proceeding to:

(1) Cover the prosecuting attorney's costs of the proceeding in which the adverse decision described in subsection (b) of this section occurred;

(2) Give to the victim or the estate of the victim of the crime that the prosecuting attorney was prosecuting in the proceeding in which the adverse decision described in subsection (b) under this section occurred;

(3) Donate to a nonprofit victims' rights advocacy group; or

(4) Donate to the State Treasury.

(e) The statute of limitations for a cause of action under this section:

(1) Is three (3) years; and

(2) Begins to run the day the judge or justice is found guilty of, or pleads guilty to, nolo contendere to, or the equivalent of nolo contendere to, a criminal offense for conduct constituting bribery in any state or federal court.

(f)(1) If a cause of action is timely filed under this section and the judge or justice is deceased at the time of the filing or dies during the pendency of the cause of action, the person or the estate of the person filing the cause of action may proceed against the estate of the judge or justice.

(2) The estate of a person may proceed with a cause of action under this section against a judge, justice, or the estate of the judge or justice, if the person dies before the cause of action accrues or during the pendency of the action.

(g) As used in this section:

(1) "Adverse decision" means a ruling in which a judge's or justice's order differs from the relief or request sought by a litigant on a motion or objection in a civil or criminal matter;

(2) "Bribery" means giving, offering, accepting, or agreeing to accept money or any other benefit, pecuniary or otherwise, for the purpose of affecting the outcome of a court proceeding or decision; and

(3) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

History. Acts 2017, No. 430, § 1.

Subchapter 2 — Prisoners — Court Actions

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-106-201. Definitions.

As used in this subchapter:

(1) "Frivolous" means having no reasonable basis in law or fact, or lacking any good faith legal argument for the extension, modification, or reversal of existing law;

(2) "Inmate" or "inmate in a penal institution" includes, but is not limited to, a person in the custody or under the supervision of the Division of Correction, the Division of Community Correction, or the United States Bureau of Prisons; and

(3) "Malicious" means filing numerous actions, or actions brought in bad faith on de minimis issues.

History. Acts 1997, No. 371, § 2; 2019, No. 910, § 965.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (2).

16-106-202. Premature, frivolous, or malicious lawsuits.

(a) A civil action or claim initiated against the state, the Board of Corrections, the Division of Correction, the Division of Community Correction, another state agency, or a political subdivision, or an original action in an appellate court, or an appeal of an action, whether or not the plaintiff was represented in court, by an inmate in a penal institution or an incarcerated person appearing pro se may be:

(1) Dismissed without prejudice by the court on its own motion or on a motion of the defendant, if all administrative remedies available to the inmate have not been exhausted; or

(2) Dismissed with prejudice by the court on a motion of the defendant if the court is satisfied that the action is frivolous or malicious.

(b) As used in this section, "civil action" does not include a petition for a writ of habeas corpus or other petition for post-conviction release in which the court is jurisdictionally empowered to grant release from incarceration or a reduction in sentence.

History. Acts 1997, No. 371, § 1; 2019, No. 910, § 966.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in the introductory language of (a).

16-106-203. Sanctions.

If the court determines before or at trial that one (1) or more of the causes of action are frivolous or malicious, any one (1) or more of the following sanctions may be imposed:

(1) Award attorney's fees and actual costs incurred by the state, the Division of Correction, or the Division of Community Correction, another state agency, a political subdivision, the Attorney General's office, or the defendant, not to exceed two thousand five hundred dollars ($2,500) per frivolous cause of action;

(2) Court costs not to exceed five hundred dollars ($500) per cause of action;

(3) Order the Division of Correction to revoke up to thirty (30) days' earned good-time credits accrued, under § 12-29-201 et seq.;

(4) Order the Division of Correction to revoke permission to have nonessential personal property of the inmate, including, but not limited to, televisions, radios, stereos, or tape recorders. If permission is revoked, the Division of Correction shall take appropriate precautions to protect the property during the period of the revocation; or

(5) Impose a civil sanction in an amount not to exceed one thousand dollars ($1,000).

History. Acts 1997, No. 371, § 3; 2019, No. 910, §§ 967, 968.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" throughout the section; and substituted "Division of Community Correction" for "Department of Community Correction" in (1).

16-106-204. Fees and costs.

(a) Any award of attorney's fees or costs, or the imposition of a sanction shall serve as a judgment against the inmate, and the Division of Correction is authorized to take up to fifty percent (50%) of the inmate's account per month until paid.

(b) The judgment shall be subject to execution without further order of any court for a period of ten (10) years from the date of an award or imposition of a sanction.

History. Acts 1997, No. 371, § 4; 2019, No. 910, § 969.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a).

Subchapter 3 — Prisoners — Administrative Remedies

SECTION.

16-106-301. Exhaustion of administrative remedies required — Definition.

(a) An incarcerated person may not bring an action with respect to prison conditions under the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., any other state law, 42 U.S.C. § 1983, or any other federal law until the incarcerated person has exhausted all available administrative remedies.

(b) As used in this section, "incarcerated person" means a person who:

(1) Has been convicted of an offense and is incarcerated for that offense; or

(2) Is being held in custody for trial or sentencing.

(c) This section does not apply to an action challenging the validity of a conviction or sentence, including without limitation the following actions:

(1) Direct appeal;

(2) A petition under Rule 37 of the Arkansas Rules of Criminal Procedure;

(3) A petition for writ of error coram nobis; or

(4) A petition for writ of habeas corpus.

(d) When determining the issue of exhaustion of administrative remedies, including if a dismissal of an action is without prejudice, the court may look to state and federal court decisions that interpret the Prison Litigation Reform Act, 42 U.S.C. § 1997e.

History. Acts 1997, No. 851, § 1; 2019, No. 444, § 1.

Amendments. The 2019 amendment rewrote the section.

CHAPTER 108

ARBITRATION AND AWARD

Subchapter 2 — Uniform Arbitration Act

16-108-201. Definitions.

CASE NOTES

Cited: Tilley v. Malvern Nat'l Bank, 2017 Ark. 343, 532 S.W.3d 570 (2017).

16-108-206. Validity of agreement to arbitrate.

CASE NOTES

Validity of Trust.

If the appellate court were to decide that this section is applicable to a trust agreement, the appellate court would also conclude that, under subsection (b) of this section, it is within the province of the court to decide whether an agreement to arbitrate exists and that would include the dispute here concerning whether the settlor/grantor was subject to undue influence or had insufficient testamentary capacity to execute the amendment to the trust. A challenge to the validity of a trust on the grounds of undue influence or incompetency is a determination for the court and not one for arbitration. Gibbons v. Anderson, 2019 Ark. App. 193, 575 S.W.3d 144 (2019).

16-108-207. Motion to compel or stay arbitration.

CASE NOTES

Analysis

Applicability.
Stay Pending Arbitration.

Applicability.

Because appellant did not refuse to arbitrate, the Arkansas Arbitration Act did not require appellee to file a motion to compel arbitration. Helton v. Joseph D. Calhoun, Ltd., 2017 Ark. App. 418 (2017).

Stay Pending Arbitration.

Circuit court erroneously dismissed a subcontractor's counterclaim because under this section the court on just terms had to stay any judicial proceedings when it ordered arbitration; thus, the circuit court was directed to stay the judicial action and retain jurisdiction of the controversy until the arbitration process had been concluded. R.E.C. Enters., LLC v. Gaillard Builders, Inc., 2018 Ark. App. 188 (2018).

16-108-223. Vacating award.

CASE NOTES

Refusal to Vacate Affirmed.

Although both parties submitted valuations reflecting an LLC member's interest in the LLC, only appellees' valuation complied with the terms of the LLC agreement; thus, the member failed to prove a statutory ground for vacating the arbitration award. Shannon v. Steinberg, 2017 Ark. App. 231, 519 S.W.3d 363 (2017) (decided under prior version of uniform act).

Cited: Goldtrap v. Bold Dental Mgmt., LLC, 2018 Ark. App. 209, 547 S.W.3d 104 (2018).

16-108-224. Modification or correction of award.

CASE NOTES

Cited: Goldtrap v. Bold Dental Mgmt., LLC, 2018 Ark. App. 209, 547 S.W.3d 104 (2018).

16-108-228. Appeals.

CASE NOTES

Cited: BHC Pinnacle Pointe Hosp., LLC v. Nelson, 2020 Ark. 70, 594 S.W.3d 62 (2020).

CHAPTER 110

ATTACHMENT AND GARNISHMENT

Subchapter 4 — Garnishment Proceedings

16-110-402. Procedure in issuing writs of garnishment.

CASE NOTES

Notice.

Circuit court erred in denying a garnishee's motion for relief from an order to pay in a garnishment proceeding; the garnishee's constitutional right to due process was not met because the garnishee did not receive notice of the hearing, and there was neither an attempt to alert the garnishee of the hearing nor an actual awareness of it on the garnishee's part. Cardinal Health v. Beth's Bail Bonds, Inc., 2017 Ark. 54, 511 S.W.3d 327 (2017).

Statutory scheme for garnishment proceedings sets some procedural rules, but the general rules of civil procedure fill in the gaps. Thus, the relevant consideration is Ark. R. Civ. P. 5, which sets out requirements for service of pleadings and papers filed after the complaint. Cardinal Health v. Beth's Bail Bonds, Inc., 2017 Ark. 54, 511 S.W.3d 327 (2017).

16-110-406. Failure of bank to answer.

CASE NOTES

Applicability.

Arkansas's appellate courts have long interpreted garnishment statutes like this section to mean that a creditor-garnishor has a lien on all the defendant's property as soon as the writ is served on the garnishee. Eagle Bank & Trust Co. v. Raynor Mfg. Co., 2019 Ark. App. 168, 574 S.W.3d 196 (2019).

Circuit court did not err in finding that a bank that had been served with a writ of garnishment was liable to the judgment creditor for the amount transferred from the judgment debtor's account after that account had been closed and then reopened; even assuming that the bank properly answered the writ of garnishment and was a payor bank under § 4-4-403, this section controlled and required the bank to lien all money at the time the writ was served — immediately. As a result, the circuit court did not err in applying the garnishment statutes instead of Article 4 of the Uniform Commercial Code. Eagle Bank & Trust Co. v. Raynor Mfg. Co., 2019 Ark. App. 168, 574 S.W.3d 196 (2019).

CHAPTER 111

UNIFORM DECLARATORY JUDGMENTS ACT

SECTION.

Effective Dates. Acts 2017, No. 1030, § 2: Apr. 6, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that taxpayer appeals of property taxes or other tax issues are unduly complicated by current state law and that school districts and other government

bodies with no control over taxation administration are incurring unnecessary and excessive legal expenses due to being required to be named as defendants in lawsuits rather than having the right to notice and participate in lawsuits. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-111-101. Scope.

CASE NOTES

Analysis

Proposed Amendments to State Constitution.
Sufficiency of Complaints.

Proposed Amendments to State Constitution.

Voter demonstrating that a proposed constitutional amendment was unconstitutional was entitled to both declaratory and mandamus relief, as (1) declaratory relief is available whether or not other relief can be obtained; (2) the Arkansas Supreme Court has routinely ordered the Arkansas Secretary of State to not count or certify any ballots cast for a proposed amendment that does not meet the requirements of the Arkansas Constitution or Arkansas law; and (3) a voter has a right to cast a ballot only on referred constitutional amendments that meet the standards set forth by the Arkansas Constitution. Martin v. Humphrey, 2018 Ark. 295, 558 S.W.3d 370 (2018).

Sufficiency of Complaints.

In a putative class action against an air ambulance service, declaratory judgment claims as pleaded were preempted by the Airline Deregulation Act, 49 U.S.C. § 41713; a judgment declaring that an air ambulance service had no claim for breach of contract, and no right to recover for services it actually provided under any equitable theory, because it did not disclose its pricing term before providing services, would be clearly preempted under the Airline Deregulation Act's express preemption provision. Ferrell v. Air EVAC EMS, Inc., 900 F.3d 602 (8th Cir. 2018).

Cited: Perroni v. Sachar, 2017 Ark. 59, 513 S.W.3d 239 (2017).

16-111-102. Power to construe, etc.

CASE NOTES

Analysis

In General.
Applicability.
Justiciable Controversy.
Sovereign Immunity.

In General.

Beneficiaries of a state Medicaid program were not required to exhaust their administrative remedies before filing their declaratory judgment action in the circuit court because any irreparable harm to the beneficiaries warranted application of the futility exception; also, § 25-15-207(d) provided the beneficiaries the statutory scheme for seeking a declaratory judgment in lieu of pursuing the exhaustion of remedies. Ark. Dep't of Human Servs. v. Ledgerwood, 2017 Ark. 308, 530 S.W.3d 336 (2017).

Applicability.

Vast majority of postconviction petitioner's claims were not appropriate for a declaratory judgment action as they related to alleged trial errors, and each of the claims presented an argument that

could have been raised on direct appeal. Jones v. Payne, 2020 Ark. App. 450 (2020).

Justiciable Controversy.

Circuit court did not err in denying resident's petition for declaratory judgment because no justiciable controversy existed; the allocation of the cost of the improvements to the water system was sufficiently detailed in the 2005 receivership order, the order had been entered and affirmed, and the city had no control over the receivership or the handling or financing of the projects undertaken pursuant to its authority. Williams v. City of Sherwood, 2019 Ark. App. 487, 586 S.W.3d 711 (2019).

Sovereign Immunity.

Marijuana cultivation facility applicant was allowed to proceed on an equal protection claim against the Medical Marijuana Commission and the claim was not barred by sovereign immunity as it was premised on the State's allegedly unconstitutional actions and sought a declaratory judgment, and the applicant had sufficiently alleged state action that differentiated among individuals. Ark. Dep't of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC, 2020 Ark. 213, 601 S.W.3d 111 (2020).

16-111-108. Supplementary relief.

CASE NOTES

Mandamus Relief.

Voter demonstrating that a proposed constitutional amendment was unconstitutional was entitled to both declaratory and mandamus relief, as (1) declaratory relief is available whether or not other relief can be obtained; (2) the Arkansas Supreme Court has routinely ordered the Arkansas Secretary of State to not count or certify any ballots cast for a proposed amendment that does not meet the requirements of the Arkansas Constitution or Arkansas law; and (3) a voter has a right to cast a ballot only on referred constitutional amendments that meet the standards set forth by the Arkansas Constitution. Martin v. Humphrey, 2018 Ark. 295, 558 S.W.3d 370 (2018).

16-111-111. Parties.

(a) When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard.

(b)(1) When declaratory relief is sought with respect to a tax, a person or group of persons challenging the tax shall provide a governmental entity and a school district whose direct revenue could be affected by the declaration with notice of the action by providing a copy of the complaint to the governmental entity or school district.

(2) A governmental entity or school district provided with notice under subdivision (b)(1) of this section has the right to intervene in the action but is not required to be named as a party to the action nor is the governmental entity or school district considered an indispensable or necessary party to the action.

History. Acts 1953, No. 274, § 10; A.S.A. 1947, § 34-2510; Acts 2017, No. 1030, § 1.

A.C.R.C. Notes. The 2017 amendment to this section is not part of the official version of the Uniform Declaratory Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

Amendments. The 2017 amendment added (b).

CASE NOTES

Attorney General.

Defendant's arguments regarding the constitutionality of § 5-26-203, if preserved, could be heard even though she had not notified the Attorney General pursuant to this section where the State was a party to the proceedings and had the opportunity to fully defend against the constitutional challenge. Bynum v. State, 2018 Ark. App. 201, 546 S.W.3d 533 (2018).

Cited: Barrett v. Thurston, 2020 Ark. 36, 593 S.W.3d 1 (2020); Ring v. Ark. Dep't of Human Servs., 2020 Ark. App. 150, 596 S.W.3d 76 (2020).

CHAPTER 112

HABEAS CORPUS

Subchapter 1 — General Provisions

16-112-101. Procedure.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, A Jurisdictional Skirmish in the Arkansas Appellate Courts: Rule 37 Post-Conviction Appeals and the Importance of Supreme Court Rule 1-2(h), 41 U. Ark. Little Rock L. Rev. 319 (2019).

CASE NOTES

Writ Denied.

Trial court correctly held that a habeas petition was not properly addressed to it where, at the time the prisoner filed the petition, he was incarcerated in another county, and thus, the trial court lacked jurisdiction. Leach v. State, 2017 Ark. 176, 518 S.W.3d 670 (2017).

Inmate was not entitled to habeas relief because (1) the inmate's claim that he was charged under an incorrect name did not implicate the facial validity of the trial court's judgment or jurisdiction, and (2) the inmate's actual-innocence claim effectively contesting sufficiency of the evidence was not cognizable on habeas corpus. Collier v. Kelley, 2020 Ark. 77, 594 S.W.3d 50 (2020).

16-112-103. Petition.

CASE NOTES

Analysis

Actual Innocence.
Claim of Illegal Sentence.
Denial of Petition.
Double Jeopardy.
Jurisdiction.
Sufficiency of Petition.

—Probable Cause.

Actual Innocence.

A petitioner for a writ of habeas corpus who does not allege his actual innocence and proceed under Acts 2001, No. 1780, codified as § 16-112-201 et seq., must plead either the facial invalidity of the judgment or lack of jurisdiction by the trial court. Jefferson v. Kelley, 2017 Ark. 29, 509 S.W.3d 626, cert. denied, 138 S. Ct. 121, 199 L. Ed. 2d 74 (2017).

Appellant inmate's claims in the petition for writ of habeas corpus that he was innocent and that the evidence was insufficient were not within the purview of the habeas proceeding, as appellant did not invoke Acts 2001, No. 1780, codified as § 16-112-201 et seq.; further, proceedings under Acts 2001, No. 1780 must be filed in the county of conviction, but appellant's petition was filed in the county of his incarceration. Jefferson v. Kelley, 2017 Ark. 29, 509 S.W.3d 626, cert. denied, 138 S. Ct. 121, 199 L. Ed. 2d 74 (2017).

Claim of Illegal Sentence.

Appellant's claim that his 60-year sentence was illegal fell within the bounds of a habeas action, as he claimed that he could have been found guilty only of one count of violating § 5-27-602, rather than 30 counts; appellant's claim failed on the merits, however. Pelletier v. Kelley, 2018 Ark. 347, 561 S.W.3d 730 (2018), cert. denied, 139 S. Ct. 2758, 204 L. Ed. 2d 1137 (2019).

Denial of Petition.

Appellant inmate's claims of ineffective assistance of counsel, trial error, and judicial bias were not within the purview of the habeas statute. Jefferson v. Kelley, 2017 Ark. 29, 509 S.W.3d 626, cert. denied, 138 S. Ct. 121, 199 L. Ed. 2d 74 (2017).

Because appellant inmate failed to challenge the facial validity of the judgment or the circuit court's jurisdiction, his claims of prosecutorial misconduct did not fall within the parameters of the remedy of writ of habeas corpus. Jefferson v. Kelley, 2017 Ark. 29, 509 S.W.3d 626, cert. denied, 138 S. Ct. 121, 199 L. Ed. 2d 74 (2017).

Because the nature of the offense remained the same and an amendment changed only the manner of the alleged commission of the crime, appellant failed to state a claim for habeas relief on the ground of a defective information. Jefferson v. Kelley, 2017 Ark. 29, 509 S.W.3d 626, cert. denied, 138 S. Ct. 121, 199 L. Ed. 2d 74 (2017).

Because petitioner alleged that he was being held according to an invalid conviction and that the trial court lacked jurisdiction, the circuit court appropriately considered any basis for the writ of habeas corpus that petitioner could have raised outside Acts 2001, No. 1780, as amended by Acts 2005, No. 2250, § 16-112-201 et seq.; however, prosecutorial misconduct was not cognizable as it did not implicate the facial validity of the judgment or the trial court's jurisdiction, and actual innocence is not cognizable in habeas proceedings that are not brought under § 16-112-201 et seq. Muldrow v. Kelley, 2018 Ark. 126, 542 S.W.3d 856 (2018).

After the Arkansas Supreme Court in a Rule 37 appeal had directed dismissal of two of petitioner's three convictions stemming from a jury trial, the circuit court did not clearly err in dismissing petitioner's subsequent petition for a writ of habeas corpus because none of petitioner's arguments provided evidence of probable cause to believe that he was being illegally detained on the remaining delivery conviction; defendant did not establish the circuit court's lack of subject-matter or territorial jurisdiction, his sentence was not facially invalid, he was not being detained for an illegal period of time, and the sentence for the delivery charge was statutorily authorized. A claim that the improper admission of evidence may have contributed to a sentence is not cognizable in a habeas proceeding. Conley v. Kelley, 2019 Ark. 23, 566 S.W.3d 116 (2019).

Inmate's appeal of the dismissal of his habeas petition was dismissed because the inmate's speedy trial, involuntary plea, evidence sufficiency, and ineffective assistance claims were not cognizable, as (1) the writ would not issue to correct errors or irregularities at trial, (2) lack of a speedy trial did not implicate the facial validity of a judgment or the trial court's jurisdiction, (3) a plea claim did not raise an illegal sentence, (4) habeas proceedings were not a means to contest the sufficiency of the evidence, and (5) ineffective assistance had to be raised in a postconviction motion under Ark. R. Crim. P. 37.1. Bell v. Gibson, 2019 Ark. 127 (2019).

Habeas petitioner's argument that the sentence was grossly disproportionate

was not cognizable as it would have required an evaluation of the circumstances of his case. Proctor v. Payne, 2020 Ark. 142, 598 S.W.3d 17 (2020).

Although a circuit court clearly erred in determining that petitioner's Fair Sentencing of Minors Act (FSMA) arguments were previously considered in a prior habeas petition, his argument regarding the FSMA's parole-eligibility provisions were not cognizable in a habeas proceeding. Parole eligibility falls clearly within the domain of the executive branch and specifically the Department of Corrections, as fixed by statute. Proctor v. Payne, 2020 Ark. 142, 598 S.W.3d 17 (2020).

It was proper to deny and dismiss appellant's petition for a writ of habeas corpus because appellant could not challenge the underlying convictions since for purposes of a sentence enhancement, a conviction was final when the judgment was pronounced; even if imposed in error, the sentence would not have required modification because appellant's sentence of life imprisonment for aggravated robbery was well within the statutory range for a Class Y felony, regardless of whether it was enhanced. Osborn v. Payne, 2021 Ark. 94 (2021).

Double Jeopardy.

Petitioner's double jeopardy claim was not cognizable where he failed to establish that on the face of the commitment order there was an illegal sentence imposed or that the trial court lacked jurisdiction, and thus a typographical error in the order affirming his sentence did not legitimize his double jeopardy claim. Jones v. Payne, 2021 Ark. 37, 618 S.W.3d 132 (2021).

Jurisdiction.

Crcuit court did not clearly err in dismissing petitioner's lack of jurisdiction claim where he did not indicate how alleged additional evidence prevented his claim from being anything but repetitive, but merely made a conclusory contention of a violation of territorial jurisdiction without further development distinguishing it from his previous claim. Jones v. Payne, 2021 Ark. 37, 618 S.W.3d 132 (2021).

Sufficiency of Petition.

Circuit court did not abuse its discretion when it denied petitioner's request to proceed in forma pauperis pursuant to Ark. R. Civ. P. 72 and held that petitioner had failed to state a colorable claim for habeas relief, as the same claims concerning his motion in limine for joinder of offenses had been previously addressed and found to be outside the purview of habeas proceedings; petitioner's latest iteration of his claims represented an abuse of the writ. Watts v. Kelley, 2019 Ark. 207, 575 S.W.3d 558 (2019).

—Probable Cause.

Circuit court properly denied inmate leave to proceed in forma pauperis on the habeas corpus petition because he failed to present a colorable cause of action under Ark. R. Civ. P. 72(c); the inmate's pleading did not satisfy the additional requirement under this section that he make a showing of probable cause. Morgan v. Kelley, 2019 Ark. 189, 575 S.W.3d 108 (2019).

16-112-105. Form of writ.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, A Jurisdictional Skirmish in the Arkansas Appellate Courts: Rule 37 Post-Conviction Appeals and the Importance of Supreme Court Rule 1-2(h), 41 U. Ark. Little Rock L. Rev. 319 (2019).

CASE NOTES

Jurisdiction.

Because petitioner inmate challenged a conviction in another county, the circuit court did not have jurisdiction under Acts 2001, No. 1780, as amended by Acts 2005, No. 2250, § 16-112-201 et seq.; the court did have jurisdiction for claims for the writ not under that act. Muldrow v. Kelley,

2018 Ark. 126, 542 S.W.3d 856 (2018).

Subchapter 2 — New Scientific Evidence

16-112-201. Writ of Habeas Corpus — New scientific evidence.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, A Jurisdictional Skirmish in the Arkansas Appellate Courts: Rule 37 Post-Conviction Appeals and the Importance of Supreme Court Rule 1-2(h), 41 U. Ark. Little Rock L. Rev. 319 (2019).

Michael Pollock, Note: Rush to Judgment: Arkansas's Troubling Interpretation of DNA Statutory Law, 41 U. Ark. Little Rock L. Rev. 417 (2019).

CASE NOTES

Analysis

Applicability.
Jurisdiction.
Relief Denied.
Scientific Evidence.

Applicability.

Appellant inmate's claims in the petition for writ of habeas corpus that he was innocent and that the evidence was insufficient were not within the purview of the habeas proceeding, as appellant did not invoke Acts 2001, No. 1780, codified as § 16-112-201 et seq.; further, proceedings under Acts 2001, No. 1780 must be filed in the county of conviction, but appellant's petition was filed in the county of his incarceration. Jefferson v. Kelley, 2017 Ark. 29, 509 S.W.3d 626, cert. denied, 138 S. Ct. 121, 199 L. Ed. 2d 74 (2017).

Because petitioner inmate challenged a conviction in another county, the circuit court did not have jurisdiction under Acts 2001, No. 1780, as amended by Acts 2005, No. 2250, § 16-112-201 et seq. Muldrow v. Kelley, 2018 Ark. 126, 542 S.W.3d 856 (2018).

Jurisdiction.

Circuit court did not clearly err when it concluded that it did not have jurisdiction to address petitioner's claim for habeas relief because petitioner's conviction was entered in another county; a petition for a writ of habeas corpus alleging entitlement to new scientific testing under § 16-112-201 et seq. must be addressed to the court that entered the conviction. Hill v. Kelley, 2018 Ark. 118, 542 S.W.3d 852 (2018).

Relief Denied.

Because appellant, convicted of capital murder as an accomplice, failed to state a basis on which the trial court could have ordered scientific testing, he could not prevail on appeal; appellant failed to satisfy the statutory requirements because the results of proposed testing to determine whether there were other individuals at the crime scene would not support the theory of defense he relied on in a way to establish his innocence or raise a reasonable probability that he did not commit the offense. Evidence connecting another person to the crime scene would not exonerate defendant. Bienemy v. State, 2016 Ark. 427, 504 S.W.3d 588 (2016).

Trial court did not clearly err in holding that death row defendant, convicted of a 1993 murder, failed to meet the predicate requirements for DNA testing of 26 pieces of evidence because the proposed testing could not have raised a reasonable probability that defendant did not commit the offense given the significant evidence tying him to the murder; the presence of another male's DNA from testing of items such as the Caucasian hairs could not significantly advance defendant's claim of innocence. Johnson v. State, 2019 Ark. 391, 591 S.W.3d 265 (2019), cert. denied, 141 S. Ct. 1370, 209 L. Ed. 2d 118 (2021).

Scientific Evidence.

Supreme Court reinvested jurisdiction in the circuit court and granted petitioner permission to seek relief via a writ of error coram nobis. A review conducted by the federal government concluded that there

were errors in a forensic hair analyst's work, and the prosecutor conceded that the analyst's work was material to petitioner's capital felony murder conviction. Pitts v. State, 2016 Ark. 345, 501 S.W.3d 803 (2016).

16-112-202. Form of motion.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Michael Pollock, Note: Rush to Judgment: Arkansas's Troubling Interpretation of DNA Statutory Law, 41 U. Ark. Little Rock L. Rev. 417 (2019).

CASE NOTES

Analysis

Petition Denied.
Postconviction DNA Testing.
Time Limitations.

Petition Denied.

Because appellant, convicted of capital murder as an accomplice, failed to state a basis on which the trial court could have ordered scientific testing, he could not prevail on appeal; appellant failed to satisfy the statutory requirements because the results of proposed testing to determine whether there were other individuals at the crime scene would not support the theory of defense he relied on in a way to establish his innocence or raise a reasonable probability that he did not commit the offense. Evidence connecting another person to the crime scene would not exonerate defendant. Bienemy v. State, 2016 Ark. 427, 504 S.W.3d 588 (2016).

Postconviction DNA Testing.

Appellant could not prevail on his habeas petition where he had not demonstrated that an electron microscope was unavailable at the time of his original trial, that the proposed testing would have been more probative than testing available, or that any evidence was available for testing other than the victim's own hair and blood. Hall v. State, 2017 Ark. 77, 511 S.W.3d 842 (2017).

Circuit court did not clearly err in denying a postconviction petition for DNA testing of a hair ascribed to an accomplice where even if the hair had not come from the accomplice, it only showed that someone had been in the abandoned house before the murder or during the several-month interlude between the crime and the discovery of the victim's body, and the State had presented sufficient evidence corroborating the accomplice's testimony to implicate petitioner in the murder. Martin v. State, 2018 Ark. 176, 545 S.W.3d 763 (2018).

Petitioner's request for DNA testing of the victim's clothing and the materials used to bind the victim's body was properly denied as untimely where all of the evidence was available at the time of trial, petitioner's desire to test additional evidence based on a different theory of the crime was at best a bare assertion of innocence, and the methods of testing he sought were available at the time of trial. Martin v. State, 2018 Ark. 176, 545 S.W.3d 763 (2018).

Trial court did not clearly err in holding that death row defendant, convicted of a 1993 murder, failed to meet the predicate requirements for DNA testing of 26 pieces of evidence because the proposed testing could not have raised a reasonable probability that defendant did not commit the offense given the significant evidence tying him to the murder; the presence of another male's DNA from testing of items such as the Caucasian hairs could not significantly advance defendant's claim of innocence. Johnson v. State, 2019 Ark. 391, 591 S.W.3d 265 (2019), cert. denied, 141 S. Ct. 1370, 209 L. Ed. 2d 118 (2021).

Time Limitations.

Dismissal of a habeas petition as untimely was proper where appellant had not rebutted the presumption against timeliness by establishing his incompetence, the existence of newly discovered evidence, or that the denial of his petition would result in a manifest injustice. Hall v. State, 2017 Ark. 77, 511 S.W.3d 842 (2017).

16-112-208. Testing procedures — Definition.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Michael Pollock, Note: Rush to Judgment: Arkansas's Troubling Interpretation of DNA Statutory Law, 41 U. Ark. Little Rock L. Rev. 417 (2019).

CHAPTER 114
MALPRACTICE ACTIONS

Subchapter 2 — Actions for Medical Injury

RESEARCH REFERENCES

ALR. Malpractice: Liability in Connection with Insertion of Prosthetic or Other Corrective Devices in Patient's Body. 21 A.L.R.7th Art. 1 (2017).

Liability for Medical Malpractice of Treatment for Sleep-Related Disorders. 29 A.L.R.7th Art. 6 (2018).

Malpractice or Negligence in Conducting Colonoscopy, Including Pre- and Post-operative Care. 34 A.L.R.7th Art. 4 (2018).

Tort Liability of Physician or Hospital in Connection with Organ or Tissue Transplant Procedures. 38 A.L.R.7th Art. 5 (2019).

Liability for Malpractice in Diagnosis or Misdiagnosis of, or Treatment for, Migraine. 41 A.L.R.7th Art. 6 (2019).

Medical Malpractice in Failing to Diagnose or Properly Treat Multiple Sclerosis, or Misdiagnosing Another Condition as Multiple Sclerosis. 41 A.L.R.7th Art. 13 (2019).

16-114-201. Definitions.

RESEARCH REFERENCES

Ark. L. Rev. J. Thomas Sullivan, Arkansas, Meet Tarasoff: The Question of Expanded Liability to Third Persons for Mental Health Professionals, 69 Ark. L. Rev. 987 (2016).

16-114-203. Statute of limitations.

CASE NOTES

Actions Barred.

Circuit court properly dismissed a patient's medical-malpractice action against doctors with prejudice because service was not obtained within 120 days as required by Ark. R. Civ. P. 4, and there was simply no proof of timely service presented to support the patient's claim that the doctors had been served by certified mail. No green cards were returned for three of the defendant doctors. Although a green card was returned for a fourth defendant doctor, there was no proof that the person who signed it was the doctor's agent. McCoy v. Robertson, 2018 Ark. App. 279, 550 S.W.3d 33 (2018).

16-114-206. Burden of proof.

CASE NOTES

Analysis

Expert Testimony.
—Locality Rule.
Proximate Cause.

Expert Testimony.

Plaintiff, allegedly injured during a physical therapy session, failed to establish the elements of his medical malpractice case by expert testimony, as required by this section; a doctor's testimony referred to the failure to report, yet plaintiff did not establish any injury from failure to report, other testimony was too vague as the standard of care was not stated with specificity and did not establish that defendant proximately caused plaintiff's injuries, and an orthopedic surgeon never testified about the standard of care for physical therapists treating knee-surgery patients or that defendant's actions constituted a breach. Johnson v. Schafer, 2018 Ark. App. 630, 565 S.W.3d 144 (2018).

Plaintiff's case required the explanation of knee anatomy, knee surgery, physical therapy rehabilitation practices and procedures, and pharmacology of anticoagulants, which did not justify a departure from the general rule that a plaintiff must prove a medical-malpractice claim through expert testimony. Johnson v. Schafer, 2018 Ark. App. 630, 565 S.W.3d 144 (2018).

Circuit court properly granted summary judgment to a hospital in an action filed by a personal representative (PR) for medical malpractice in the death of her mother because the PR failed to offer expert testimony to support the proximate cause element; the interaction between the mother's numerous conditions, her malnutrition, and the necessity of supplemental nutrition methods of feeding either by mouth or through other means would not be within the common knowledge of a jury and did not justify a departure from the general rule that a plaintiff must prove a medical malpractice claim through expert testimony. Valentine v. White Cty. Med. Ctr., 2020 Ark. App. 565, 615 S.W.3d 729 (2020).

In a medical malpractice case, the doctors and medical clinic met their initial burden by showing, from the attached requests for admissions to which the patient failed to file responses, that the patient had no expert to testify as to the elements of his medical malpractice claim in order to meet his burden of proof. To the extent the patient suggested that the issues in the case were within the common knowledge of the jury, he failed to provide an explanation. Stewart v. Deaton, 2021 Ark. App. 73, 618 S.W.3d 181 (2021).

Summary judgment was properly granted to the doctors and clinic on a medical malpractice claim where the affidavit provided by the patient provided only that the affiant was a medical doctor. There was no information about his qualifications, education, or experience from which to conclude that he was a qualified medical expert. Stewart v. Deaton, 2021 Ark. App. 73, 618 S.W.3d 181 (2021).

—Locality Rule.

Even if the locality rule was applicable to defense experts in a medical negligence action, the testimony of the witness was sufficient to satisfy the rule as he testified about his extensive experience practicing medicine in Arkansas, his education in Arkansas, and his service on the Arkansas Medical Society Board of Trustees, all of which provided the basis for his understanding of the standard of practice in Rogers/Bentonville. He expressly stated that the standard of practice in Rogers/Bentonville was the same as in Van Buren, where he practiced. Brazeal v. Cooper, 2016 Ark. App. 442, 503 S.W.3d 829 (2016).

Proximate Cause.

Trial court properly granted a doctor and a medical practice summary judgment in an administratrix's action alleging medical negligence because the expert testimony failed to establish proximate cause; the expert testimony the administratrix cited failed to clearly articulate that the doctor's negligence was the proximate cause of the patient's death. One expert opined that the patient's awakening from the anesthesia was more likely if

the surgery had been stopped, but the issue was whether the patient would have lived, not whether he would have awakened. Thomas v. Meadors, 2017 Ark. App. 421, 527 S.W.3d 724 (2017).

16-114-209. False and unreasonable pleadings.

RESEARCH REFERENCES

ALR. Constitutionality of Affidavit or Certificate of Merit Requirements in Actions Brought Against Licensed Professionals. 45 A.L.R.7th Art. 1 (2019).

16-114-212. Tolling of the statute of limitations.

CASE NOTES

Notice.

Patient's claim that the circuit court erred in dismissing his complaint because he complied with the notice provisions contained in the tolling statute of the Arkansas Medical Malpractice Act failed because the complaint was filed outside the Act's two-year statute of limitations and he failed to comply with the notice portion of the tolling statute. Williams v. St. Vincent Infirmary Med. Ctr., 2021 Ark. 14, 615 S.W.3d 721 (2021).

CHAPTER 115

MANDAMUS AND PROHIBITION

16-115-101. Definitions.

CASE NOTES

Mandamus.

Voter demonstrating that a proposed constitutional amendment was unconstitutional was entitled to both declaratory and mandamus relief, as (1) declaratory relief is available whether or not other relief can be obtained; (2) the Arkansas Supreme Court has routinely ordered the Arkansas Secretary of State to not count or certify any ballots cast for a proposed amendment that does not meet the requirements of the Arkansas Constitution or Arkansas law; and (3) a voter has a right to cast a ballot only on referred constitutional amendments that meet the standards set forth by the Arkansas Constitution. Martin v. Humphrey, 2018 Ark. 295, 558 S.W.3d 370 (2018).

16-115-107. Determination of petition.

CASE NOTES

Mandamus Granted.

Voter demonstrating that a proposed constitutional amendment was unconstitutional was entitled to both declaratory and mandamus relief, as (1) declaratory relief is available whether or not other relief can be obtained; (2) the Arkansas Supreme Court has routinely ordered the Arkansas Secretary of State to not count or certify any ballots cast for a proposed amendment that does not meet the requirements of the Arkansas Constitution or Arkansas law; and (3) a voter has a right to cast a ballot only on referred constitutional amendments that meet the standards set forth by the Arkansas Constitution. Martin v. Humphrey, 2018 Ark. 295, 558 S.W.3d 370 (2018).

CHAPTER 116
PRODUCTS LIABILITY

RESEARCH REFERENCES

ALR. Products Liability: Clothes Washing Machines. 104 A.L.R.6th 97 (2015).

Subchapter 1 — General Provisions

16-116-101. Liability of supplier.

RESEARCH REFERENCES

ALR. Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Prescription Drugs Generally. 38 A.L.R.7th Art. 7 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Prescription Drug User Concerning Particular Witnesses. 39 A.L.R.7th Art. 1 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Prescription Drug User Concerning Particular Drugs. 39 A.L.R.7th Art. 2 (2019).

Opioid Marketing, Promoting, and Distributing Claims Against Manufacturers and Distributors. 39 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Medical Devices Generally. 39 A.L.R.7th Art. 5 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Medical Device User Concerning Particular Witnesses. 39 A.L.R.7th Art. 8 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Medical Device User Concerning Particular Devices. 40 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Automobiles and Other Motor Vehicles Generally. 42 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Automobile and Other Motor Vehicle User Concerning Particular Vehicles. 43 A.L.R.7th Art. 7 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Household Items. 44 A.L.R.7th Art. 5 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Electronic Devices. 45 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Industrial Equipment and Chemicals. 46 A.L.R.7th Art. 8 (2019).

Products Liability: Inferior Vena Cava (IVC) Filters. 47 A.L.R.7th Art. 5 (2020).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Agricultural Equipment, Chemicals, and Feed. 48 A.L.R.7th Art. 4 (2020).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Sporting Equipment. 49 A.L.R.7th Art. 1 (2020).

CASE NOTES

Analysis

Causation.
Unreasonably Dangerous.

Causation.

Circuit court properly granted summary judgment where the parents' evidence merely established that there were several possible sources of ignition of a child's hair while using a hair product, and thus, the parents failed to establish causation to support their strict-liability claims. Chandler v. Wal-Mart Stores Inc., 2016 Ark. App. 372, 498 S.W.3d 766 (2016).

In a products liability suit, summary judgment was properly granted to the auto dealer on the strict liability claim where the evidence and arguments focused causation on the later-added wheels and tires, not the inherent design of the vehicle as alleged in the complaint, and thus the evidence failed to show that the dealer knew that the original design of the vehicle was unreasonably dangerous. Bank of the Ozarks, Inc. v. Ford Motor Co., 2020 Ark. App. 231, 599 S.W.3d 718 (2020).

Unreasonably Dangerous.

Building owner's strict liability claim against a toilet supply line seller was properly dismissed where the owner did not present sufficient evidence that the danger of water escaping from the line was beyond the contemplation of an ordinary and reasonable consumer, and thus failed to show that the line was unreasonably dangerous. Apex Oil Co. v. Jones Stephens Corp., 881 F.3d 658 (8th Cir. 2018).

Subchapter 2 — Arkansas Product Liability Act of 1979

RESEARCH REFERENCES

ALR. Products Liability: Clothes Dryers. 1 A.L.R.7th Art. 4 (2015).

Products Liability: Hormone Replacement Medications. 7 A.L.R.7th Art. 2 (2016).

Products Liability and Negligence Claims Arising from Use of Stud Guns, Staple Guns, Nail Guns, or Parts Thereof. 12 A.L.R.7th Art. 5 (2016).

Products Liability Issues Surrounding Design, Production, Distribution, and Use of Recreational and Vehicular Helmets. 13 A.L.R.7th Art. 5 (2016).

Validity, Construction, and Application of Products Liability Statute Precluding or Limiting Recovery Where Product Has Been Altered or Modified After Leaving Hands of Manufacturer or Seller. 13 A.L.R.7th Art. 8 (2016).

Products Liability: Personal Injury or Death Allegedly Caused by Defect in Motorcycle or Its Parts or Equipment. 14 A.L.R.7th Art. 7 (2016).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Adequacy of Warning Provided to User of Prescription Drugs. 25 A.L.R.7th Art. 8 (2017).

16-116-202. Definitions.

RESEARCH REFERENCES

Ark. L. Rev. Frank Griffin, The Trouble with the Curve: Manufacturer and Surgeon Liability for "Learning Curves" Associated with Unreliably-Screened Implantable Medical Devices, 69 Ark. L. Rev. 755 (2016).

CASE NOTES

Unreasonably Dangerous.

Building owner's strict liability claim against a toilet supply line seller was properly dismissed where the owner did not present sufficient evidence that the danger of water escaping from the line was beyond the contemplation of an ordinary and reasonable consumer, and thus failed to show that the line was unreasonably dangerous. Apex Oil Co. v. Jones Stephens Corp., 881 F.3d 658 (8th Cir. 2018).

16-116-204. Considerations for trier of fact.

RESEARCH REFERENCES

ALR. Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Prescription Drugs Generally. 38 A.L.R.7th Art. 7 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Prescription Drug User Concerning Particular Witnesses. 39 A.L.R.7th Art. 1 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Prescription Drug User Concerning Particular Drugs. 39 A.L.R.7th Art. 2 (2019).

Opioid Marketing, Promoting, and Distributing Claims Against Manufacturers and Distributors. 39 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Medical Devices Generally. 39 A.L.R.7th Art. 5 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Medical Device User Concerning Particular Witnesses. 39 A.L.R.7th Art. 8 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Medical Device User Concerning Particular Devices. 40 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Automobiles and Other Motor Vehicles Generally. 42 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Automobile and Other Motor Vehicle User Concerning Particular Vehicles. 43 A.L.R.7th Art. 7 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Household Items. 44 A.L.R.7th Art. 5 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Electronic Devices. 45 A.L.R.7th Art. 4 (2019).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Industrial Equipment and Chemicals. 46 A.L.R.7th Art. 8 (2019).

Products Liability: Inferior Vena Cava (IVC) Filters. 47 A.L.R.7th Art. 5 (2020).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Agricultural Equipment, Chemicals, and Feed. 48 A.L.R.7th Art. 4 (2020).

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Sporting Equipment. 49 A.L.R.7th Art. 1 (2020).

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dence to Support Product Misuse Defense in Actions Concerning Automobiles and Other Motor Vehicles. 18 A.L.R.7th Art. 4 (2017).

Products Liability: Sufficiency of Evidence to Support Product Misuse Defense in Actions Concerning Cosmetics and Other Personal Care Products. 27 A.L.R.7th Art. 4 (2018).

Products Liability: Alteration or Modification of Motor Vehicle After It Leaves Hands of Manufacturer or Seller as Affecting Liability for Product-Caused Harm. 28 A.L.R.7th Art. 2 (2018).

Products Liability: Alteration or Modification of Machinery and Tools After They Leave Hands of Manufacturer or Seller as Affecting Liability for Product-Caused Harm. 28 A.L.R.7th Art. 5 (2018).

16-116-206. Evidence of alterations.

RESEARCH REFERENCES

ALR. Products Liability: Sufficiency of Evidence to Support Product Misuse Defense in Actions Concerning Automobiles and Other Motor Vehicles. 18 A.L.R.7th Art. 4 (2017).

Products Liability: Sufficiency of Evidence to Support Product Misuse Defense in Actions Concerning Cosmetics and Other Personal Care Products. 27 A.L.R.7th Art. 4 (2018).

Products Liability: Alteration or Modification of Motor Vehicle After It Leaves Hands of Manufacturer or Seller as Affecting Liability for Product-Caused Harm. 28 A.L.R.7th Art. 2 (2018).

Products Liability: Alteration or Modification of Machinery and Tools After They Leave Hands of Manufacturer or Seller as Affecting Liability for Product-Caused Harm. 28 A.L.R.7th Art. 5 (2018).

Subchapter 3 — Firearms and Ammunition

SECTION.

16-116-302. Limitations on actions — Award of fees.

(a) A person or other public or private entity may not bring an action in tort, other than a product liability action, against a firearms, nonpowder gun, or ammunition manufacturer, importer, or dealer for any remedy arising from physical or emotional injury, physical damage, or death caused by the discharge of a firearm, a nonpowder gun, or ammunition unless the action alleges that the physical or emotional injury, physical damage, or death was caused by the intentional or negligent discharge of a firearm, a nonpowder gun, or ammunition by the manufacturer, importer, or dealer.

(b) A firearm, a nonpowder gun, or ammunition manufacturer, importer, or dealer shall not be held liable as a third party for the actions of another person involving the use of a firearm, a nonpowder gun, or ammunition in any cause of action.

(c)(1) The court, upon the filing of a proper motion, shall dismiss any action brought against a firearms, nonpowder gun, or ammunition manufacturer, importer, or dealer, which the court determines is prohibited under subsection (a) or subsection (b) of this section.

(2) Upon dismissal under this subsection, the court shall award reasonable attorney's fees, in addition to costs, to each named defendant against whom the cause of action is dismissed.

(d)(1) Notwithstanding subsection (a) of this section, a firearms, nonpowder gun, or ammunition manufacturer, importer, or dealer may be sued in tort for any damages proximately caused by an act of the manufacturer, importer, or dealer in violation of a state law or rule or federal law or regulation.

(2) In any action brought under this subsection, the plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant violated the state law or rule or federal law or regulation.

History. Acts 2003, No. 935, § 2; 2019, No. 315, § 1321.

Amendments. The 2019 amendment inserted "law or rule" in (d)(1) and (d)(2).

CHAPTER 118

MISCELLANEOUS ACTIONS

Effective Dates. Acts 2019, No. 556, § 7: Mar. 26, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Centers for Disease Control and Prevention currently estimates that five hundred fifty-one (551) girls or women in Arkansas are at the risk of, or have undergone, female genital mutilation; that female genital mutilation is recognized globally as a human rights violation; and that this legislation is immediately needed to help the women of Arkansas as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-118-113. Civil cause of action for unauthorized access to property — Definitions.

(a) As used in this section:

(1) "Commercial property" means:

(A) A business property;

(B) Agricultural or timber production operations, including buildings and all outdoor areas that are not open to the public; and

(C) Residential property used for business purposes; and

(2) "Nonpublic area" means an area not accessible to or not intended to be accessed by the general public.

(b) A person who knowingly gains access to a nonpublic area of a commercial property and engages in an act that exceeds the person's authority to enter the nonpublic area is liable to the owner or operator of the commercial property for any damages sustained by the owner or operator.

(c) An act that exceeds a person's authority to enter a nonpublic area of commercial property includes an employee who knowingly enters a nonpublic area of commercial property for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and without authorization subsequently:

(1) Captures or removes the employer's data, paper, records, or any other documents and uses the information contained on or in the employer's data, paper, records, or any other documents in a manner that damages the employer;

(2) Records images or sound occurring within an employer's commercial property and uses the recording in a manner that damages the employer;

(3) Places on the commercial property an unattended camera or electronic surveillance device and uses the unattended camera or electronic surveillance device to record images or data for an unlawful purpose;

(4) Conspires in an organized theft of items belonging to the employer; or

(5) Commits an act that substantially interferes with the ownership or possession of the commercial property.

(d) A person who knowingly directs or assists another person to violate this section is jointly liable.

(e) A court may award to a prevailing party in an action brought under this section one (1) or more of the following remedies:

(1) Equitable relief;

(2) Compensatory damages;

(3) Costs and fees, including reasonable attorney's fees; and

(4) In a case where compensatory damages cannot be quantified, a court may award additional damages as otherwise allowed by state or federal law in an amount not to exceed five thousand dollars ($5,000) for each day, or a portion of a day, that a defendant has acted in violation of subsection (b) of this section, and that in the court's discretion are commensurate with the harm caused to the plaintiff by the defendant's conduct in violation of this section.

(f) This section does not:

(1) Diminish the protections provided to employees under state or federal law; or

(2) Limit any other remedy available at common law or provided by law.

(g) This section does not apply to a state agency, a state-funded institution of higher education, a law enforcement officer engaged in a lawful investigation of commercial property or of the owner or operator of the commercial property, or a healthcare provider or medical services provider.

History. Acts 2017, No. 606, § 1.

16-118-114. Civil action against a person who engages in a riot or disorderly conduct, or who obstructs or interferes with emergency medical services personnel or first responder.

(a) In addition to any other cause of action available to a person, a person who suffers injury to himself or herself or to his or her property as a direct or indirect result of:

(1) An act of obstructing or interfering with emergency medical personnel or a first responder, § 5-60-123, if the act of obstructing or interfering with emergency medical personnel or a first responder is a felony or Class A misdemeanor, may bring a civil action against a person who obstructed or interfered with the emergency medical personnel or first responder; or

(2) A riot or the activity of a rioter under § 5-71-201 et seq., may bring a civil action against the rioter or a person or entity that incites the riot.

(b) A court hearing a civil action under this section may award compensatory damages, punitive damages, costs, reasonable attorney's fees, and expenses to a plaintiff who prevails in the civil action.

History. Acts 2017, No. 952, § 2.

16-118-115. Civil actions regarding violations of § 11-5-117.

An employer or employee who knowingly violates § 11-5-117 is liable to the prevailing party in an action brought under this section and, upon proving the prevailing party's case by clear and convincing evidence, is entitled to one (1) or more of the following remedies:

(1) Equitable relief;

(2) Compensatory damages; and

(3) Costs and fees, including reasonable attorney's fees.

History. Acts 2017, No. 1071, § 4; 2021, No. 809, § 4.

A.C.R.C. Notes. Acts 2017, No. 1071, § 1, provided: "Legislative intent. It is the intent of this act to reinforce and protect the right of each citizen to lawfully transport and store a handgun within his or her private motor vehicle for lawful purposes in any place where the private motor vehicle is otherwise permitted to be located."

Amendments. The 2021 amendment

substituted "§ 11-5-117" for "§ 5-73-326" in the section heading and the introductory language.

16-118-116. Civil actions for unlawful female genital mutilation.

(a) A person who knowingly commits or attempts to commit unlawful female genital mutilation of a minor as described in § 5-14-136 is liable to the victim of the unlawful female genital mutilation.

(b) A person who knowingly directs or assists another person to violate or attempt to violate § 5-14-136 is jointly liable under this section.

(c) A court may award to a prevailing party in an action brought under this section one (1) or more of the following remedies:

(1) Compensatory damages, including treble damages if the defendant is shown to have acted willfully and maliciously;

(2) Punitive damages;

(3) Costs and fees, including reasonable attorney's fees; or

(4) Any other appropriate relief as provided by law.

(d) A cause of action under this section may be brought by a victim of an unlawful female genital mutilation, or her estate, at any point before the victim reaches or would have reached twenty-eight (28) years of age.

(e) The burden of proof under a cause of action under this section is preponderance of the evidence.

(f) The doctrine of forum non conveniens does not apply to a claim arising under this section.

History. Acts 2019, No. 556, § 4.

16-118-117. Civil fertility fraud — Definitions.

(a) As used in this section:

(1) "Healthcare provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession; and

(2) "Human reproductive material" means:

(A) A human spermatozoon or ovum; or

(B) A human organism at any stage of development from fertilized ovum to embryo.

(b) A person may bring an action for civil fertility fraud against a healthcare provider who knowingly:

(1) Treated the person or the spouse of the person for infertility, pregnancy, surrogacy, or childbearing by using the healthcare provider's own human reproductive material or the human reproductive material of another person without the person's informed written consent to treatment using the healthcare provider's own human reproductive material or the human reproductive material of the other person;

(2) Treated the person or the spouse of the person for infertility, pregnancy, surrogacy, or childbearing by using human reproductive material donated by a donor and knows or reasonably should have known that the human reproductive material was used:

(A) Without the donor's consent; or

(B) In a manner or to an extent other than that to which the donor consented; or

(3) Used the person's human reproductive material to treat another person for infertility, pregnancy, surrogacy, or childbearing knowing or being in a position to reasonably know that the person did not consent to his or her human reproductive material's being used or used in a manner or to an extent other than that to which the person consented.

(c) An action under this section may be commenced not later than five (5) years after the earliest of the date on which:

(1) The person first discovers evidence sufficient to bring an action against the healthcare provider through deoxyribonucleic acid (DNA) analysis or other more accurate scientific analysis;

(2) The person first becomes aware of the existence of a recording that provides evidence sufficient to bring an action against the healthcare provider; or

(3) The defendant admits to the facts giving rise to the action.

(d) A plaintiff who prevails in an action under this section is entitled to:

(1) Reasonable attorney's fees;

(2) The costs of the fertility treatment as applicable; and

(3) Economic, compensatory, and punitive damages.

(e) A person who brings an action under subdivision (b)(1) or subdivision (b)(2) of this section has a separate cause of action for each child born as the result of the fraudulent fertility treatment.

(f) A person who brings an action under subdivision (b)(3) of this section has a separate cause of action for each fertility patient who received a fertility treatment with the person's human reproductive material.

(g) This section does not prohibit a person from pursuing any other remedy provided by law.

History. Acts 2021, No. 609, § 4.

A.C.R.C. Notes. Acts 2021, No. 609, § 5, provided: "Conflicts with other law. This act does not affect § 16-120-901 et seq."

16-118-118. Civil action for vulnerable victims of sexual abuse — Definitions.

(a) As used in this section:

(1) "Disabled" means that a person was determined legally disabled or determined medically disabled by a medical or mental health provider at the time of the alleged wrongful conduct and was unable to give legal consent;

(2) "Minor" means a person of under eighteen (18) years of age;

(3) "Sexual abuse" means the commission of one (1) or more of the following acts or offenses:

(A) Rape, § 5-14-103;

(B) Sexual assault in the first degree, § 5-14-124;

(C) Sexual assault in the second degree, § 5-14-125;

(D) Engaging children in sexually explicit conduct for use in a visual or print medium, § 5-27-303;

(E) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(F) Use of children in sexual performances, § 5-27-401 et seq.;

(G) Unlawful sexual contact with a vulnerable victim; and

(H) Unlawful sexually explicit conduct with a vulnerable victim;

(4) "Sexual contact" means the same as defined in § 5-14-101;

(5) "Sexually explicit conduct" means the same as in § 5-27-302; and

(6) "Vulnerable victim" means a person who was either disabled, a minor, or both at the time he or she was a victim of sexual abuse.

(b)(1) Notwithstanding any other statute of limitation or any other law that may be construed to reduce the statutory period set forth in this section, before he or she reaches fifty-five (55) years of age a vulnerable victim may bring a civil action against any party who committed sexual abuse against the vulnerable victim or whose tortious conduct caused the vulnerable victim to be a victim of sexual abuse.

(2) Notwithstanding any other statute of limitation or any other law that may be construed to reduce the statutory period set forth in this section, a civil action similar to a civil action described in subdivision (b)(1) of this section, including a cause of action arising before, on, or after July 28, 2021, that was barred or dismissed due to a statute of limitation is revived, and the civil action may be commenced not earlier than six (6) months after and not later than thirty (30) months after July 28, 2021.

(c) This section does not apply to a claim that has been litigated to finality on the merits in any court of competent jurisdiction before July 28, 2021.

(d) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief in a civil action under this section.

History. Acts 2021, No. 1036, § 1.

CHAPTER 120

IMMUNITY FROM TORT LIABILITY

SUBCHAPTER.

8. Miscellaneous Grants of Tort Immunity.
9. Wrongful Birth Civil Liability Protection Act.
10. Arkansas Cycling Activities Act.
11. Coronavirus 2019 (COVID-19) Tort Immunity. [Effective Until May 1, 2023.]

Subchapter 8 — Miscellaneous Grants of Tort Immunity

16-120-802. Possession of concealed handgun in parking lot.

(a) A business entity, owner or legal possessor of property, or private employer is not liable in a civil action for damages, injuries, or death resulting from or arising out of an employee's or another person's actions involving a handgun transported or stored under § 11-5-117 or from allowing a person to enter the private employer's place of business or parking lot under § 11-5-117, including without limitation the theft of a handgun from an employee's private motor vehicle, unless the business entity, owner or legal possessor of property, or private employer intentionally solicited or procured the other person's actions.

(b) Employees shall, within twenty-four (24) hours of obtaining knowledge of a theft occurring on a private employer's private parking lot, report a handgun as lost or stolen to the private employer and a local law enforcement agency with jurisdiction.

(c) A handgun possessed in a parking lot does not solely constitute a failure on the part of a private employer to provide a safe workplace.

(d)(1) A private employer may terminate any employee for flagrantly or unreasonably displaying a handgun in plain sight of others at the private employer's place of business or in plain sight in an employee's motor vehicle.

(2) A private employer may bring a civil action against an employee who knowingly displays in a flagrant or unreasonable manner a handgun in plain sight of others at a private employer's place of business or in plain sight in an employee's motor vehicle, as described in § 16-118-115, except when an employee's display of a handgun is incidental and reasonably related to the transfer of the employee's handgun from his or her locked container located within the employee's motor vehicle to another part of the employee's motor vehicle or employee's person.

History. Acts 2017, No. 1071, § 5; 2021, No. 809, § 5.

A.C.R.C. Notes. Acts 2017, No. 1071, § 1, provided: "Legislative intent. It is the intent of this act to reinforce and protect the right of each citizen to lawfully transport and store a handgun within his or her private motor vehicle for lawful purposes in any place where the private motor vehicle is otherwise permitted to be located."

Amendments. The 2021 amendment, in (a), substituted the first occurrence of "§ 11-5-117" for "§ 5-73-326(a)" and substituted the second occurrence of "§ 11-5-117" for "§ 5-73-326(b)".

16-120-803. Immunity for owners of stolen agricultural equipment or off-road vehicles — Definition.

(a)(1) As used in this section, "agricultural equipment or off-road vehicle" means a self-propelled motorized vehicle that is not designed to operate on a roadway but may be used for an agricultural or recreational purpose.

(2) "Agricultural equipment or off-road vehicle" includes:

(A) An all-terrain vehicle as defined in § 27-21-102;

(B) A vehicle designed to be used for agricultural purposes, such as a tractor; and

(C) A riding lawnmower.

(3) "Agricultural equipment or off-road vehicle" does not include:

(A) A motor vehicle designed and used for a medical purpose;

(B) A motor vehicle designed to be used by an individual with a physical disability to assist in walking;

(C) A motorized scooter or other vehicle designed to be used as a toy by a child;

(D) A bicycle equipped with a small motor designed and used to assist the bicycle operator and that is not operated at a speed greater than twenty miles per hour (20 m.p.h.);

(E) An electric personal assistive mobility device that is designed to not be capable of a speed of more than twenty miles per hour (20 m.p.h.); or

(F) A device moved by human power or used exclusively upon stationary rails or tracks.

(b) An owner of agricultural equipment or an off-road vehicle that is stolen or unlawfully appropriated by another person who commits a criminal offense using the agricultural equipment or off-road vehicle is not liable in a civil action for damages, injuries, or death resulting from or arising out of the use of the agricultural equipment or off-road vehicle in the commission of the criminal offense.

History. Acts 2019, No. 518, § 1.

16-120-804. Possession of concealed handgun by emergency medical technician.

(a) A business entity, owner or legal possessor of property, or private employer is not liable in a civil action for damages, injuries, or death resulting from or arising out of an employee's actions involving a handgun lawfully possessed by an emergency medical technician under § 12-15-202, when the employee is the emergency medical technician, including without limitation the theft of a handgun from an employee's private motor vehicle, unless the business entity, owner or legal possessor of property, or private employer intentionally solicited or procured the other person's actions.

(b) A concealed handgun lawfully possessed by an emergency medical technician does not solely constitute a failure on the part of a private employer to provide a safe workplace.

(c) A private employer may terminate an emergency medical technician for flagrantly or unreasonably displaying a handgun in plain sight of others at the private employer's place of business or in plain sight in an employee's motor vehicle.

History. Acts 2021, No. 948, § 2.

Subchapter 9 — Wrongful Birth Civil Liability Protection Act

SECTION.

A.C.R.C. Notes. Acts 2021, No. 609, § 5, provided: "Conflicts with other law. This act does not affect § 16-120-901 et seq."

16-120-901. Definitions.

As used in this subchapter:

(1) "Civil action for wrongful birth" means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child, seeking economic or noneconomic damages for the child because of a condition that existed at the time of the birth of the child and which is based on a claim that the act or omission of a person contributed to the child's being born; and

(2) "Civil action for wrongful life" means a cause of action that is brought by or on behalf of a child, seeking economic or noneconomic damages for the child because of a condition that existed at the time of the birth of the child and which is based on a claim that the act or omission of a person contributed to the child's being born.

History. Acts 2017, No. 385, § 1.

16-120-902. Wrongful birth claims — Wrongful life claims.

(a) A person is not liable for damages in a civil action for wrongful birth based on a claim that, but for an act or omission of the defendant, a child would not or should not have been born.

(b) A person is not liable for damages in a civil action for wrongful life based on a claim that, but for an act or omission of the defendant, the person bringing the action would not or should not have been born.

(c) This section:

(1) Applies to a claim regardless of whether the child is born healthy or with a birth defect or other medical condition;

(2) Does not apply to a civil action for damages for an intentional, reckless, or grossly negligent act or omission, including without limitation an act or omission that violates a criminal law; and

(3) Does not limit or eliminate liability for an act or omission that is a proximate cause of any injury to the child before, during, or after birth.

History. Acts 2017, No. 385, § 1.

Subchapter 10 — Arkansas Cycling Activities Act

16-120-1001. Title.

This subchapter shall be known and may be cited as the "Arkansas Cycling Activities Act".

History. Acts 2019, No. 573, § 1.

16-120-1002. Definitions.

As used in this subchapter:

(1) "Bicycle" means a:

(A) Two-wheeled vehicle with a rear drive wheel that is solely human-powered; or

(B) Two-wheeled or three-wheeled vehicle with:

(i) Fully operable pedals and an electric motor of less than seven hundred fifty watts (750 W); and

(ii) A maximum speed of less than twenty miles per hour (20 m.p.h.) on a paved level surface when powered solely by an electric motor and ridden by an operator who weighs one hundred seventy pounds (170 lbs.);

(2) "Bicycle outfitter" means an individual, group, club, partnership, corporation, or business entity, whether or not operating for profit, or an employee or organized agent, that sponsors, organizes, rents, or provides to a participant the use of a bicycle;

(3) "Cycling activity" means riding a bicycle on a road, trail, path, or other surface for:

(A) Competition, exercise, or other undertaking that involves a bicycle;

(B) A training or teaching activity; or

(C) A ride, trip, or other activity that is sponsored by a bicycle outfitter;

(4) "Inherent risk of a cycling activity" means the dangers or conditions that are an integral part of cycling activities on the roads, trails, paths, or other surfaces of the state, including without limitation:

(A) Injury or death caused by:

(i) A change or variation in the surface which may cause a participant to lose control, lose his or her balance, or crash the bicycle;

(ii) A collision with a natural or man-made object on or adjacent to the cycling surface, including without limitation a:

(a) Tree;

(b) Rock; or

(c) Tree stump; or

(iii) A collision with a pedestrian, a vehicle, or another cyclist;

(B) Weather-related illnesses or conditions, including without limitation:

(i) Hypothermia;

(ii) Frostbite;

(iii) Heat exhaustion;

(iv) Heat stroke; or

(v) Dehydration;

(C) An act of nature, including without limitation:

(i) Falling rocks;

(ii) Inclement weather;

(iii) Thunder and lightning;

(iv) Severe or varied temperatures;

(v) Winds; or

(vi) Tornadoes;

(D) Operator error, including equipment failure due to operator error;

(E) Attack or injury by an animal; or

(F) The aggravation of an injury, illness, or condition because the injury, illness, or condition occurred in a remote place where medical facilities are not available; and

(5) "Participant" means a person who rents, leases, or uses a bicycle provided by a bicycle outfitter whether or not a fee is paid.

History. Acts 2019, No. 573, § 1; 2021, No. 475, § 22.

Amendments. The 2021 amendment deleted "which may result in injury or death" at the end of (4)(A)(iii).

16-120-1003. Liability of a bicycle outfitter.

Except as provided in § 16-120-1004(2):

(1)(A) A participant assumes the inherent risk of a cycling activity by engaging in the cycling activity.

(B) A participant or a participant's representative shall not make a claim against, maintain an action against, or recover from a bicycle outfitter for the loss or damage or injury to or the death of the participant resulting from the inherent risk of a cycling activity; and

(2) A bicycle outfitter is not liable for an injury to or the death of a participant resulting from the inherent risk of a cycling activity.

History. Acts 2019, No. 573, § 1.

16-120-1004. Exclusions.

This subchapter does not:

(1) Apply to a relationship between an employer and an employee under the Workers' Compensation Law, § 11-9-101 et seq.; or

(2) Prevent or limit the liability of a bicycle outfitter or the bicycle outfitter's agent that:

(A) Intentionally injures a participant;

(B) Commits an act or omission of gross negligence concerning the safety of a participant that proximately causes injury to or the death of the participant;

(C) Provides an unsafe bicycle to a participant and knew or should have known that the bicycle was unsafe to the extent that it could cause an injury;

(D) Fails to provide a participant with a bicycle that meets the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission under 16 C.F.R. Part 1512, as it existed on January 1, 2017;

(E) Fails to use the degree of care that an ordinarily careful and prudent person would use under the same or similar circumstances; or

(F) Commits other acts, errors, or omissions that constitute willful or wanton misconduct, gross negligence, or criminal conduct that proximately causes injury, damage, or death.

History. Acts 2019, No. 573, § 1; 2021, No. 475, § 23.

Amendments. The 2021 amendment substituted "or" for "and" at the end of (1).

16-120-1005. Supplemental to other law.

The limitation of liability provided by this subchapter is in addition to any other limitation of liability provided by law.

History. Acts 2019, No. 573, § 1.

16-120-1006. Signage.

A bicycle outfitter shall post and maintain signage in a clearly visible location at or near where the bicycle outfitter conducts cycling activities and in black letters at least one inch (1″) high containing the following warning:

"WARNING — Under Arkansas law, § 16-120-1003, the liability of a bicycle outfitter is limited. You are assuming the risk of participating in a cycling activity."

History. Acts 2019, No. 573, § 1.

Subchapter 11 — Coronavirus 2019 (COVID-19) Tort Immunity [Effective Until May 1, 2023]

A.C.R.C. Notes. Acts 2021, No. 559 § 2, provided: "Temporary legislation. This act expires on May 1, 2023."

Effective Dates. Acts 2021, No. 559, § 3: Apr. 5, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that coronavirus 2019 (COVID-19) continues to spread within the State of Arkansas and adjoining states, threatening the public safety of the citizens of Arkansas, and it is expected that the spread will continue; that Arkansas business owners are fearful of opening their businesses or of keeping businesses open during the coronavirus 2019 (COVID-19) outbreak because of the threat of litigation arising from the alleged exposure to coronavirus 2019 (COVID-19) on their premises or during activities that they manage; and that this act is immediately necessary because it is essential to the economic and financial stability of the State of Arkansas during this emergency for businesses in the state to reopen or to remain open to provide goods and services to the people of Arkansas without the threat of civil liability related to coronavirus 2019 (COVID-19). Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-120-1101. Purpose. [Effective until May 1, 2023.]

The purpose of this subchapter is to protect businesses that open or remain open while COVID-19 is being spread in the community.

History. Acts 2021, No. 559, § 1.

16-120-1102. Definitions. [Effective until May 1, 2023.]

As used in this subchapter:

(1) "COVID-19" means the acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus 2019 (COVID-19) or any other disease, health condition, or threat caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or by any virus mutating from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

(2) "Person" means an individual, entity, organization, group, association, partnership, business, institution of learning, commercial concern, corporation, or company, whether for profit or not for profit; and

(3) "Premises" means real property and any building or structure appurtenant to real property.

History. Acts 2021, No. 559, § 1.

16-120-1103. Liability immunity. [Effective until May 1, 2023.]

A person or a person's employee, agent, or officer is immune from civil liability for damages or injuries caused by or resulting from exposure of an individual to COVID-19 on business premises owned or operated by the person or during an activity managed by the person.

History. Acts 2021, No. 559, § 1.

16-120-1104. Scope. [Effective until May 1, 2023.]

The immunity from civil liability under this subchapter:

(1) Is in addition to any other immunity provided by state or federal law; and

(2) Applies to a claim brought:

(A) In state or federal court; or

(B) Before the Arkansas State Claims Commission.

History. Acts 2021, No. 559, § 1.

16-120-1105. Exceptions. [Effective until May 1, 2023.]

The immunity from civil liability under this subchapter does not apply to:

(1) Willful, reckless, or intentional misconduct resulting in injury or damages to another person; or

(2) Workers' compensation benefits paid by or on behalf of an employer to an employee under the Workers' Compensation Law, § 11-9-101 et seq., or a comparable workers' compensation law of another jurisdiction.

History. Acts 2021, No. 559, § 1.

16-120-1106. Presumption. [Effective until May 1, 2023.]

It is presumed that a person or a person's employee, agent, or officer is not committing willful, reckless, or intentional misconduct under this subchapter if the person or the person's employee, agent, or officer is:

(1) Substantially complying with health and safety directives or guidelines issued by the Governor, the Secretary of the Department of Health, the Centers for Disease Control and Prevention, and the Centers for Medicare & Medicaid Services concerning COVID-19; or

(2) Acting in good faith while attempting to comply with health and safety directives or guidelines issued by the Governor or the secretary concerning COVID-19.

History. Acts 2021, No. 559, § 1.

CHAPTER 123
CIVIL RIGHTS

SUBCHAPTER.
1. Arkansas Civil Rights Act of 1993.
3. Arkansas Fair Housing Commission.
4. Religious Freedom Restoration Act.

Subchapter 1 — Arkansas Civil Rights Act of 1993

RESEARCH REFERENCES

ALR. Discrimination on Basis of Sexual Orientation as Form of Sex Discrimination Proscribed by Title VII of Civil Rights Act of 1964. 28 A.L.R. Fed. 3d Art. 4 (2018).

16-123-101. Title.

RESEARCH REFERENCES

ALR. Adverse Employment Action Taken Against Employee for Social Media Communications. 103 A.L.R.6th 19 (2015).

CASE NOTES

Analysis

Due Process.
Immunity.
Respondeat Superior.
Specific Cases.

Due Process.

Circuit court properly denied the city a directed verdict in a class action alleging that the assessment of installment fees in Little Rock District Court, Second Division violated due process in charging installment fees even if the fine was paid off early. The lack of notice, as established by the evidence at trial, precluded satisfaction of due process; there was no evidence showing that plaintiff mother was advised of a refund or reconsideration of the fee, but instead, she was simply told by the court cashier that she had to pay the entire sum. City of Little Rock v. Nelson, 2020 Ark. 34, 592 S.W.3d 633 (2020).

Immunity.

Statutory immunity under § 19-10-305 barred the employee's claims under the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., against the supervisor in her individual capacity where the employee's bare allegation of willful and wanton conduct was not enough to demonstrate malice. Ark. State Med. Bd. v. Byers, 2017 Ark. 213, 521 S.W.3d 459 (2017).

Sovereign immunity under Ark. Const., Art. 5, § 20, barred an employee's state civil rights claims against a state agency and a supervisor in her official capacity

where the employee had not developed her arguments as to the ultra vires or bad faith exceptions below, and a judgment for the employee would have subjected the state to liability. Ark. State Med. Bd. v. Byers, 2017 Ark. 213, 521 S.W.3d 459 (2017).

Respondeat Superior.

Circuit court properly denied the city a directed verdict in a class action alleging that the assessment of installment fees in Little Rock District Court, Second Division violated due process because the installment fee policy constituted a governmental policy or custom to which municipal liability could attach; the district court judge consulted with deputy city attorneys and others in implementing the policy and the policy was automatically applied to all district court defendants on an installment plan. City of Little Rock v. Nelson, 2020 Ark. 34, 592 S.W.3d 633 (2020).

Specific Cases.

Where a deceased's estate appealed a district court's entry of summary judgment in favor of defendants as to its Fourth Amendment and Arkansas Civil Rights Act excessive force claim, not only were two officers entitled to qualified immunity, but one officer's use of a taser and second officer's subsequent use of deadly force were reasonable. Frederick v. Motsinger, 873 F.3d 641 (8th Cir. 2017).

16-123-102. Definitions.

As used in this subchapter:

(1) "Because of gender" means, but is not limited to, on account of pregnancy, childbirth, or related medical conditions;

(2) "Compensatory damages" means damages for mental anguish, loss of dignity, and other intangible injuries, but "compensatory damages" does not include punitive damages;

(3) "Disability" means a physical or mental impairment that substantially limits a major life function, but "disability" does not include:

(A) Compulsive gambling, kleptomania, or pyromania;

(B) Current use of illegal drugs or psychoactive substance use disorders resulting from illegal use of drugs; or

(C) Alcoholism;

(4) "Employee" does not include:

(A) Any individual employed by his or her parents, spouse, or child;

(B) An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility; or

(C) An individual employed outside the State of Arkansas;

(5) "Employer" means a person who employs nine (9) or more employees in the State of Arkansas in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(6) "National origin" includes ancestry;

(7) "Place of public resort, accommodation, assemblage, or amusement" means any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds, but "place of public resort, accommodation, assemblage, or amusement" does not include:

(A) Any lodging establishment which contains not more than five (5) rooms for rent and which is actually occupied by the proprietor of such establishment as a residence; or

(B) Any private club or other establishment not in fact open to the public; and

(8) "Religion" means all aspects of religious belief, observance, and practice.

History. Acts 1993, No. 962, § 9; 1995, No. 480, § 1; 2017, No. 191, § 1.

Amendments. The 2017 amendment deleted "or any agent of such person" at the end of (5).

CASE NOTES

Compensatory Damages.

Circuit court erroneously considered events and circumstances unrelated to the city's December 2015 due-process violations in determining the tenants' awards of damages under the Arkansas Civil Rights Act because much of the evidence recounted by the circuit court about mental anguish and emotional distress as a result of the city's actions lacked a causal connection to the violations. The February 2016 gas leak was not causally connected to the December 2015 due-process violation; one of the tenants moved from her apartment in November 2016 based on water-leak damage and a sewer back-up and not the due process violations; and there was no evidence that another tenant's worsened medical conditions were caused by the closure. City of Little Rock v. Alexander Apts., LLC, 2020 Ark. 12, 592 S.W.3d 224 (2020).

16-123-103. Applicability.

CASE NOTES

Burden of Proof.

Trial court did not err in rejecting employees' proposed instruction because the employees had the burden to prove an adverse employment action motivated by intentional discrimination, and the proposed language improperly shifted the ultimate burden of proof to the employer. Brown v. UPS, Inc., 2017 Ark. App. 501, 531 S.W.3d 427 (2017).

"Honest belief" rule is not an affirmative defense; it is simply a rule. Brown v. UPS, Inc., 2017 Ark. App. 501, 531 S.W.3d 427 (2017).

16-123-104. Construction.

CASE NOTES

Cited: Ark. State Med. Bd. v. Byers, 2017 Ark. 213, 521 S.W.3d 459 (2017).

16-123-105. Civil rights offenses.

RESEARCH REFERENCES

ALR. Construction and Application of State Statutory Provisions Prohibiting Racial Profiling. 102 A.L.R.6th 621 (2015).

Retail Establishment's Surveillance of or Refusal to Serve Individuals on Basis of Race or Ethnicity, or Other Alleged Instances of Consumer "Racial Profiling," as Infringement of Civil Rights Under State Law. 103 A.L.R.6th 1 (2015).

What is Reasonable Accommodation of

Deaf or Hearing-Impaired Employee for Purposes of Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. 2 A.L.R. Fed. 3d Art. 1 (2015).

Identity of Commenter and Relationship of Remark to Employment Decision as Determinants of Relevance of Stray Remark or Comment in Title VII Action for Sex Discrimination. 4 A.L.R. Fed. 3d Art. 7 (2015).

Stray Remark or Comment Involving Male Plaintiffs in Title VII Action for Sex Discrimination. 4 A.L.R. Fed. 3d Art. 8 (2015).

Employment Discrimination Against Obese Persons as Violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973. 4 A.L.R. Fed. 3d Art. 10 (2015).

Stray Remark or Comment Toward Female Plaintiffs Regarding Pregnancy, Child-Rearing, and Related References in Title VII Action for Sex Discrimination. 6 A.L.R. Fed. 3d Art. 3 (2015).

Validity, Construction, and Application of Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-1(a), 2000e-2(e)(2)) Exempting Activities of Religious Organizations from Operation of Title VII Equal Employment Opportunity Provisions. 6 A.L.R. Fed. 3d Art. 6 (2015).

Construction and Application of Four-Fifths Rule for Finding Evidence of Adverse Impact in Federal Employment Discrimination Cases. 7 A.L.R. Fed. 3d Art. 1 (2016).

Stray Remark or Comment Involving General References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 7 A.L.R. Fed. 3d Art. 2 (2016).

Rights of Workers with Disabilities at Sheltered Workshops or Work Activity Centers under Federal Civil Rights Provisions. 8 A.L.R. Fed. 3d Art. 1 (2016).

Employee's Unpaid Leave as Reasonable Accommodation Under Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. 8 A.L.R. Fed. 3d Art. 2 (2016).

Application of Title VI of Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) or Regulations Promulgated Thereunder (40 C.F.R. §§ 7.10 et seq.) to Alleged Racial or National Origin Discrimination with Respect to Environmental Issues. 9 A.L.R. Fed. 3d Art. 1 (2016).

Stray Remark or Comment Involving Overt Sexual References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 9 A.L.R. Fed. 3d Art. 5 (2016).

Failure to Hire Deaf or Hearing-Impaired Job Applicant as Violation of Americans With Disabilities Act, 42 U.S.C. §§ 12101 et seq. 9 A.L.R. Fed. 3d Art. 7 (2016).

Employer's Dress Policy as Religious Discrimination Under Federal Law. 12 A.L.R. Fed. 3d Art. 5 (2016).

National Security Exception to Employment Discrimination Provisions of Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(g)). 12 A.L.R. Fed. 3d Art. 9 (2016).

Employer's Grooming Policy as Religious Discrimination under Federal Law. 13 A.L.R. Fed. 3d Art. 1 (2016).

Discrimination Against Credit Applicant on Basis of Race or National Origin Under Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.). 13 A.L.R. Fed. 3d Art. 9 (2016).

Retail Establishment's Surveillance of or Refusal To Serve Individuals on Basis of Race or Ethnicity, or Other Alleged Instances of Consumer "Racial Profiling," as Infringement of Civil Rights Under Federal Law. 15 A.L.R. Fed. 3d Art. 9 (2016).

Discrimination Based on Marital Status Under Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.) as Defense to Liability for Financial Obligations. 16 A.L.R. Fed. 3d Art. 9 (2016).

Rights of Employees with Bipolar Disorder Under Americans with Disabilities Act, Rehabilitation Act, and Family and Medical Leave Act. 17 A.L.R. Fed. 3d Art. 5 (2016).

CASE NOTES

ANALYSIS

Attorney's Fees.
Claim Dismissed.
Claim Not Dismissed.
Deliberate Indifference Standard.
Excessive Force.

Attorney's Fees.

After a jury found that the city had violated the Arkansas Civil Rights Act, § 16-123-101 et seq., in charging excessive installment fees in traffic court, the circuit court did not abuse its discretion in its award of attorney's fees to plaintiff under this section; the circuit court's intimate acquaintance with the record and quality of counsel's services gave it a superior opportunity to assess the critical factors. City of Little Rock v. Nelson, 2020 Ark. 19, 592 S.W.3d 666 (2020).

Claim Dismissed.

In a civil rights action brought on behalf of a detainee who died at a detention center following a car accident, after being admitted suffering from severe intoxication and drug ingestion, the jail administrator was entitled to summary judgment on plaintiff's claim that he failed to adequately train or supervise the booking deputy; the mere assertion of prior suits did not support an inference that the administrator had notice that the county's training procedures and supervision were inadequate and likely to result in constitutional violations. Barton v. Taber, 908 F.3d 1119 (8th Cir. 2018).

Claim Not Dismissed.

Deputy was not entitled to summary judgment on plaintiff's claim under the Arkansas Civil Rights Act; in light of the detainee's car accident, severe intoxication, drug ingestion, inability to stand, and inability to answer simple questions, a jury could find a medical need so obvious that a layperson would recognize the detainee's need for prompt medical attention and thus that the deputy was deliberately indifferent to the detainee's serious medical needs. Barton v. Taber, 908 F.3d 1119 (8th Cir. 2018).

Deliberate Indifference Standard.

Federal deliberate-indifference standard has been adopted as the standard to be applied to claims brought by pretrial detainees under the Arkansas Civil Rights Act. Barton v. Taber, 908 F.3d 1119 (8th Cir. 2018).

Excessive Force.

In an excessive-force case, considering the entire "course of proceedings", the trial court did not err in interpreting the claims against the officers and the police chief under the Arkansas Civil Rights Act, § 16-123-101 et seq., as individual-capacity claims. Faughn v. Kennedy, 2019 Ark. App. 570, 590 S.W.3d 188 (2019).

In an excessive-force case, material questions of fact remained regarding whether the force the officers used against the father and son and the force used by the police chief against the father was reasonable; therefore, those defendants were not entitled to summary judgment on the basis of qualified immunity. Faughn v. Kennedy, 2019 Ark. App. 570, 590 S.W.3d 188 (2019).

Trial court erred in denying summary judgment to the police chief on the son's claims under the Arkansas Civil Rights Act, § 16-123-101 et seq.; while the son made excessive-force allegations against some officers, he did not allege that the police chief used any force against him. Faughn v. Kennedy, 2019 Ark. App. 570, 590 S.W.3d 188 (2019).

Cited: Brown v. UPS, Inc., 2017 Ark. App. 501, 531 S.W.3d 427 (2017).

16-123-106. Hate offenses.

(a) A person may bring a civil action for injunctive relief or damages, or both, if he or she is subject to an act motivated by racial, religious, or ethnic animosity and the act was an act of:

(1) Intimidation or harassment;

(2) Violence directed against his or her person; or

(3) Vandalism directed against his or her real or personal property.

(b) Any aggrieved party who initiates and prevails in a civil action authorized by this section is entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the civil action, and a reasonable attorney's fee in an amount to be fixed by the court.

(c) This section does not apply to:

(1) Speech or conduct protected by the United States Constitution, Amendment I, or Arkansas Constitution, Article 2, § 6; or

(2) A civil action:

(A) Between an employee and his or her employer or between or among employees of the same employer;

(B) For damages arising out of an incident occurring in the workplace; or

(C) Arising out of the employee-employer relationship.

History. Acts 1993, No. 962, § 3; 2017, No. 191, § 2.

Amendments. The 2017 amendment rewrote the introductory language in (a); deleted "where such acts are motivated by racial, religious, or ethnic animosity" at the end of (a)(3); in (b), substituted "a civil action" for "an action" and "cost of the civil action" for "cost of the litigation"; redesignated former (c) as the introductory language of (c) and (c)(1); added (c)(2); and made stylistic changes.

16-123-107. Discrimination offenses.

(a) The right of an otherwise qualified person to be free from discrimination because of race, religion, national origin, gender, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) The right to obtain and hold employment without discrimination;

(2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(3) The right to engage in property transactions without discrimination;

(4) The right to engage in credit and other contractual transactions without discrimination; and

(5) The right to vote and participate fully in the political process.

(b) Any person who is injured by an intentional act of discrimination in violation of subdivisions (a)(2)-(5) of this section shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover compensatory and punitive damages, and, in the discretion of the court, to recover the cost of litigation and a reasonable attorney's fee.

(c)(1)(A) Any individual who is injured by employment discrimination by an employer in violation of subdivision (a)(1) of this section shall have a civil action against the employer only in a court of competent jurisdiction, which may issue an order prohibiting the discriminatory practices and provide affirmative relief from the effects of the practices, and award back pay, interest on back pay, and,

in the discretion of the court, the cost of litigation and a reasonable attorney's fee.

(B) No liability for back pay shall accrue from a date more than two (2) years prior to the filing of an action.

(2)(A) In addition to the remedies under subdivision (c)(1)(A) of this section, any individual who is injured by intentional discrimination by an employer in violation of subdivision (a)(1) of this section shall be entitled to recover compensatory damages and punitive damages.

(B) The total compensatory and punitive damages awarded under subdivision (c)(2)(A) of this section shall not exceed:

(i) The sum of fifteen thousand dollars ($15,000) in the case of an employer who employs fewer than fifteen (15) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(ii) The sum of fifty thousand dollars ($50,000) in the case of an employer who employs more than fourteen (14) and fewer than one hundred one (101) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(iii) The sum of one hundred thousand dollars ($100,000) in the case of an employer who employs more than one hundred (100) and fewer than two hundred one (201) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(iv) The sum of two hundred thousand dollars ($200,000) in the case of an employer who employs more than two hundred (200) and fewer than five hundred one (501) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year; and

(v) The sum of three hundred thousand dollars ($300,000) in the case of an employer who employs more than five hundred (500) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year.

(3) Damages under subdivisions (c)(2)(B)(ii)-(v) of this section shall not duplicate or increase an award for damages over the statutory limit allowed by state law or any federal law, as the federal law existed on January 1, 2017.

(4) Any action based on employment discrimination in violation of subdivision (a)(1) of this section shall be brought within one (1) year after the alleged employment discrimination occurred, or within ninety (90) days of receipt of a "Right to Sue" letter or a notice of "Determination" from the United States Equal Employment Opportunity Commission concerning the alleged unlawful employment practice, whichever is later.

History. Acts 1993, No. 962, §§ 4, 5; 1995, No. 480, § 3; 2017, No. 783, § 2.

A.C.R.C. Notes. Acts 2017, No. 783, § 1, provided: "Legislative intent. It is the intent of the General Assembly that this act not duplicate an award for damages over the statutory limit allowed by any other state or federal law, as this act is based on damages already provided for under federal law."

Amendments. The 2017 amendment inserted "against the employer only" in (c)(1)(A); redesignated part of (c)(2)(A) as (c)(2)(B); substituted "subdivision (c)(2)(A)

of this section" for "this subdivision (c)(2)(A)" in the introductory language of (c)(2)(B); inserted present (c)(3); and redesignated former (c)(3) as (c)(4).

RESEARCH REFERENCES

ALR. Web Site as "Public Accommodation" for Purposes of Federal or State Civil Rights Statutes. 7 A.L.R.7th Art. 1 (2016).

Who is "Supervisor" for Purposes of Racial Harassment Claim Under Title VII of Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.) Imputing Liability to Employer. 92 A.L.R. Fed. 2d 91 (2015).

What is Reasonable Accommodation of Deaf or Hearing-Impaired Employee for Purposes of Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. 2 A.L.R. Fed. 3d Art. 1 (2015).

Identity of Commenter and Relationship of Remark to Employment Decision as Determinants of Relevance of Stray Remark or Comment in Title VII Action for Sex Discrimination. 4 A.L.R. Fed. 3d Art. 7 (2015).

Stray Remark or Comment Involving Male Plaintiffs in Title VII Action for Sex Discrimination. 4 A.L.R. Fed. 3d Art. 8 (2015).

Employment Discrimination Against Obese Persons as Violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973. 4 A.L.R. Fed. 3d Art. 10 (2015).

Stray Remark or Comment Toward Female Plaintiffs Regarding Pregnancy, Child-Rearing, and Related References in Title VII Action for Sex Discrimination. 6 A.L.R. Fed. 3d Art. 3 (2016).

Validity, Construction, and Application of Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-1(a), 2000e-2(e)(2)) Exempting Activities of Religious Organizations from Operation of Title VII Equal Employment Opportunity Provisions. 6 A.L.R. Fed. 3d Art. 6 (2015).

Construction and Application of Four-Fifths Rule for Finding Evidence of Adverse Impact in Federal Employment Discrimination Cases. 7 A.L.R. Fed. 3d Art. 1 (2016).

Stray Remark or Comment Involving General References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 7 A.L.R. Fed. 3d Art. 2 (2016).

Rights of Workers with Disabilities at Sheltered Workshops or Work Activity Centers under Federal Civil Rights Provisions. 8 A.L.R. Fed. 3d Art. 1 (2016).

Employee's Unpaid Leave as Reasonable Accommodation Under Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. 8 A.L.R. Fed. 3d Art. 2 (2016).

Application of Title VI of Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) or Regulations Promulgated Thereunder (40 C.F.R. §§ 7.10 et seq.) to Alleged Racial or National Origin Discrimination with Respect to Environmental Issues. 9 A.L.R. Fed. 3d Art. 1 (2016).

Stray Remark or Comment Involving Overt Sexual References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 9 A.L.R. Fed. 3d Art. 5 (2016).

Failure to Hire Deaf or Hearing-Impaired Job Applicant as Violation of Americans With Disabilities Act, 42 U.S.C. §§ 12101 et seq. 9 A.L.R. Fed. 3d Art. 7 (2016).

Employer's Dress Policy as Religious Discrimination Under Federal Law. 12 A.L.R. Fed. 3d Art. 5 (2016).

National Security Exception to Employment Discrimination Provisions of Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(g)). 12 A.L.R. Fed. 3d Art. 9 (2016).

Employer's Grooming Policy as Religious Discrimination under Federal Law. 13 A.L.R. Fed. 3d Art. 1 (2016).

Discrimination Against Credit Applicant on Basis of Race or National Origin Under Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.). 13 A.L.R. Fed. 3d Art. 9 (2016).

Discrimination Based on Marital Status Under Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.) as Defense to Liability for Financial Obligations. 16 A.L.R. Fed. 3d Art. 9 (2016).

Rights of Employees with Bipolar Disorder Under Americans with Disabilities Act, Rehabilitation Act, and Family and Medical Leave Act. 17 A.L.R. Fed. 3d Art. 5 (2016).

CASE NOTES

Analysis

In General.
Appellate Review.
Claim Dismissed.
Evidence.
Gender Discrimination.
Statute of Limitations.

In General.

"Honest belief" rule is not an affirmative defense; it is simply a rule. Brown v. UPS, Inc., 2017 Ark. App. 501, 531 S.W.3d 427 (2017).

Appellate Review.

Because employees failed to object to the jury instructions on the elements of their discrimination claims, they waived their argument that the trial court erred in interpreting the Arkansas Civil Rights Act to require that the element of intent be proved. Brown v. UPS, Inc., 2017 Ark. App. 501, 531 S.W.3d 427 (2017).

Claim Dismissed.

Employer was properly granted summary judgment on employee's age and sex discrimination claims brought under the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, and the Arkansas Civil Rights Act of 1993 because the employee, a radiology manager, failed to present evidence demonstrating a genuine issue of material fact as to whether the employer's proffered reason for the employee's termination, i.e., the employee's rudeness and insubordination which culminated in a meeting, was a mere pretext for intentional discrimination. Main v. Ozark Health, Inc., 959 F.3d 319 (8th Cir. 2020).

Evidence.

Substantial evidence supported the jury's verdict in favor of an employer because employees failed to offer sufficient evidence to infer discriminatory animus was the real reason for the decision not to promote; there was sufficient evidence for the jury to be charged with an "honest belief" instruction because the decision makers involved in the promotion decision testified they honestly believed the employees were ineligible for promotion or less qualified than other candidates. Brown v. UPS, Inc., 2017 Ark. App. 501, 531 S.W.3d 427 (2017).

Gender Discrimination.

In an employment discrimination case in which an employer moved to dismiss, the district court rejected the employer's argument that because the Arkansas courts had rejected the so-called continuing-tort theory, and because that theory was analogous to the paycheck rule, the paycheck rule does not apply to the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq. Holt v. Deer-Mt. Judea Sch. Dist., 135 F. Supp. 3d 898 (W.D. Ark. 2015).

In a gender discrimination action, none of a former employee's purported direct evidence established the required "specific link" between his termination and gender-based animus. The absence of conclusive evidence that the employee violated internet and conduct policies was insufficient to prove improper termination because the central question in determining if termination was proper was not whether the employee actually engaged in prohibited conduct, but whether the employer believed so in good faith. Rinchuso v. Brookshire Grocery Co., 944 F.3d 725 (8th Cir. 2019).

Statute of Limitations.

Former employee's amended discrimination complaint was timely filed because the original complaint was filed within the allotted 90-day time period and the amended complaint related back to the date of the original complaint; the amended complaint clearly arose out of the conduct, transaction, or occurrence set out in the original pleading. Orr v. City of Rogers, 232 F. Supp. 3d 1052 (W.D. Ark. 2017).

Former employee failed to properly exhaust his remedies in his suit alleging age and race discrimination because the employee filed his complaint more than one year after every alleged instance of discrimination, and while the employee filed suit within 90 days of receiving a right-to-sue letter from the EEOC, that letter arose from a charge that was either untimely or otherwise provided an insufficient basis for the claims he brought. Kirklin v. Joshen Paper & Packaging of Ark. Co., 911 F.3d 530 (8th Cir. 2018).

16-123-108. Retaliation — Interference — Remedies.

(a) Retaliation. A person shall not discriminate against any individual because the individual in good faith has opposed any act or practice made unlawful by this subchapter or because the individual in good faith made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Interference, Coercion, or Intimidation. It is unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this subchapter.

(c)(1) Remedies and Procedures. The remedies and procedures available in § 16-123-107(b) are available to aggrieved persons for a violation of subsection (a) or subsection (b) of this section.

(2) An employment-related claim or a claim arising out of the employee-employer relationship for a violation of subsection (a) or subsection (b) of this section may be brought only against an employer, and the remedies and procedures are limited to the remedies and procedures available under § 16-123-107(c).

History. Acts 1995, No. 480, § 4; 2017, No. 191, § 3.

Amendments. The 2017 amendment redesignated former (c) as (c)(1); substituted "a violation of subsection (a) or subsection (b)" for "violations of subsections (a) and (b)" in (c)(1); added (c)(2); and made stylistic changes.

CASE NOTES

Analysis

Proper Defendants.
Summary Judgment.

Proper Defendants.

Law professor's Arkansas Civil Rights Act (ACRA) claims against state university officials were properly dismissed because the ACRA only permitted retaliation and interference claims against employers, not individuals. Steinbuch v. Univ. of Ark., 2019 Ark. 356, 589 S.W.3d 350 (2019).

Summary Judgment.

Circuit court's error in denying a terminated surgeon's motions to compel production was harmless because the evidence would not have rebutted the medical providers' argument that the surgeon's retaliation claim failed as a matter of law. Williams v. Baptist Health, 2020 Ark. 150, 598 S.W.3d 487 (2020).

Subchapter 2 — Arkansas Fair Housing Act

RESEARCH REFERENCES

ALR. Discrimination on Basis of Sexual Orientation as Form of Sex Discrimination Proscribed by Title VII of Civil Rights Act of 1964. 28 A.L.R. Fed. 3d Art. 4 (2018).

Fair Housing Act (42 U.S.C. §§ 3601 et seq.) — Supreme Court Cases. 30 A.L.R. Fed. 3d Art. 3 (2018).

16-123-201. Title.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Arkansas's Law on Punitive Damages (*Watkins v. Turner,* 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-203. Legislative declaration.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Arkansas's Law on Punitive Damages (*Watkins v. Turner,* 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-204. Conduct prohibited in real estate transactions — Exception.

RESEARCH REFERENCES

ALR. Web Site as "Public Accommodation" for Purposes of Federal or State Civil Rights Statutes. 7 A.L.R.7th Art. 1 (2016).

Housing Subsidy as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C. § 3604(f). 38 A.L.R. Fed. 3d Art. 12 (2019).

Relief From Zoning or Other Land Use Restrictions as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C. § 3604(f). 43 A.L.R. Fed. 3d Art. 5 (2019).

Actions under Fair Housing Act (42 U.S.C. §§ 3604, 3617), Based on Harassment or Creation of Hostile Environment With Respect to Race or National Origin. 47 A.L.R. Fed. 3d Art. 3 (2020).

16-123-205. Conduct in real estate financing prohibited — Exception.

RESEARCH REFERENCES

ALR. Housing Subsidy as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C. § 3604(f). 38 A.L.R. Fed. 3d Art. 12 (2019).

Actions under Fair Housing Act (42 U.S.C. §§ 3604, 3617), Based on Harassment or Creation of Hostile Environment With Respect to Race or National Origin. 47 A.L.R. Fed. 3d Art. 3 (2020).

16-123-208. Retaliation.

RESEARCH REFERENCES

ALR. Causation Under Retaliation Provision of Fair Housing Act (42 U.S.C. § 3617). 46 A.L.R. Fed. 3d Art. 7 (2019).

Protected Activity under Retaliation Provision of Fair Housing Act (42 U.S.C. § 3617). 47 A.L.R. Fed. 3d Art. 4 (2020).

16-123-210. Civil remedy — Definition.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Arkansas's Law on Punitive Damages (*Watkins v. Turner,* 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

Subchapter 3 — Arkansas Fair Housing Commission

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-123-301. Finding.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Arkansas's Law on Punitive Damages (*Watkins v. Turner,* 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-305. Director.

(a)(1) The Governor shall appoint a Director of the Arkansas Fair Housing Commission who shall serve at the pleasure of the Governor.

(2) The director shall report to the Secretary of the Department of Inspector General.

(3) The Arkansas Fair Housing Commission may fix the compensation, duties, authority, and responsibilities of the director.

(b) The commission may authorize the director to hire necessary staff and to provide for services, furnishings, equipment, and office

space and employees of the commission shall be employees of the Department of Inspector General.

History. Acts 2001, No. 1785, § 6; 2017, No. 774, § 1; 2019, No. 910, § 5258.

Amendments. The 2017 amendment redesignated former (a) as (a)(1) and (a)(2); in (a)(1), substituted "The Governor shall appoint" for "The Arkansas Fair Housing Commission may employ" and "who shall serve at the pleasure of the Governor" for "and" at the end; and, in (a)(2), added "The Arkansas Fair Housing Commission may" and "of the director".

The 2019 amendment inserted (a)(2) and redesignated former (a)(2) as (a)(3); and added "and employees of the commission shall be employees of the department" in (b).

16-123-317. Complaint.

(a) The Director of the Arkansas Fair Housing Commission shall investigate any discriminatory housing practices alleged in a complaint filed under this section.

(b) A complaint shall be:

(1) In writing and under oath; and

(2) In the form specified and standardized by this subchapter and the rules promulgated by the Arkansas Fair Housing Commission, which shall not require that the complaint be notarized.

(c) An aggrieved person shall not file later than one (1) year after an alleged discriminatory housing practice has occurred or terminated a complaint with the commission alleging the discriminatory housing practice.

(d) Not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, the commission may file its own complaint.

(e) A complaint may be reasonably and fairly amended at any time.

(f) On the filing of a complaint, the director shall:

(1) Give the aggrieved person notice that the complaint has been received;

(2) Advise the aggrieved person of the time limits and choice of forums under this subchapter; and

(3) Not later than the tenth day after the filing of the complaint or after the identification of an additional respondent under § 16-123-320, provide each respondent:

(A) Notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this subchapter; and

(B) A copy of the original complaint.

History. Acts 2001, No. 1785, § 18; 2019, No. 315, § 1322.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(2).

16-123-318. Answer.

(a) Not later than the tenth day after receipt of the notice and a copy of the complaint as required by § 16-123-317(f)(3), a respondent may file an answer to the complaint.

(b) An answer must be:

(1) In writing;

(2) Under oath; and

(3) In the form specified and standardized by this subchapter and the rules promulgated by the Arkansas Fair Housing Commission, which shall not require that the answer be notarized.

(c) An answer may be reasonably and fairly amended at any time.

History. Acts 2001, No. 1785, § 19; 2003, No. 1775, § 4; 2019, No. 315, § 1323.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(3).

16-123-321. Conciliation.

(a) The Director of the Arkansas Fair Housing Commission, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the director or the Arkansas Fair Housing Commission, to the extent feasible, shall engage in conciliation with respect to the complaint.

(b) A conciliation agreement reached through conciliation is a written agreement between a respondent, the complainant, and the commission requiring approval from all three (3).

(c)(1) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint.

(2) A conciliation agreement may authorize appropriate relief, including monetary relief.

(d) A conciliation agreement shall be made public, unless the complainant and respondent agree otherwise and the director determines that disclosure is not necessary to further the purposes of this subchapter.

(e) If the director has reasonable cause to believe that a respondent has breached a conciliation agreement, the director may authorize and the Attorney General may file a civil action for the enforcement of the conciliation agreement as provided by § 16-123-330.

(f) No statements or actions made within the course of conciliation may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(g) After completion of the director's investigation, the director shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final report related to that investigation.

History. Acts 2001, No. 1785, § 22; 2005, No. 250, § 1; 2017, No. 473, § 1.

Amendments. The 2017 amendment deleted "or the Attorney General may au-

thorize the director to hire outside counsel to seek enforcement" at the end of (e).

16-123-322. Temporary or preliminary relief.

(a) If the Director of the Arkansas Fair Housing Commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, and after consultation with the office of the Attorney General, the director may authorize the filing by the Attorney General of a civil action in a court of competent jurisdiction in the county where the respondent resides for appropriate temporary or preliminary relief pending final disposition of the complaint.

(b) The filing of a civil action under this section does not affect the initiation or continuation of an administrative proceeding entitled "administrative hearing" under § 16-123-331.

History. Acts 2001, No. 1785, § 23; 2005, No. 250, § 2; 2017, No. 473, § 2.

Amendments. The 2017 amendment, in (a), substituted "of a civil action" for "and the Attorney General may file a civil action" and deleted "or the Attorney General may authorize the director to hire outside counsel to seek the relief" at the end.

16-123-330. Attorney General — Action for enforcement.

(a) If a timely election is made under § 16-123-329, the Arkansas Fair Housing Commission shall authorize and the Attorney General shall file and maintain on behalf of the aggrieved person a civil action in a court of competent jurisdiction seeking appropriate relief under this section.

(b) If the commission determines, as under § 16-123-321, and after consultation with the office of the Attorney General, that a conciliation agreement has been breached by the respondent, the Attorney General may file a civil action on behalf of the aggrieved person in a court of competent jurisdiction in the county where the party seeking enforcement of the conciliation agreement resides.

(c) An aggrieved person may intervene in the civil action.

(d) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under this subchapter.

History. Acts 2001, No. 1785, § 31; 2003, No. 1775, § 6; 2005, No. 250, § 3; 2017, No. 473, § 3; 2019, No. 385, § 3.

Amendments. The 2017 amendment, in (a), substituted "shall" for "may" two times, substituted "person" for "party", and substituted "seeking appropriate relief under this section" for "in the county where the respondent seeking appropriate relief under this section resides or the Attorney General may authorize the commission to hire outside counsel to pursue appropriate relief" at the end; in (b), substituted "party" for "respondent", and deleted "or the Attorney General may authorize the commission to hire outside counsel to seek enforcement of the conciliation agreement"; deleted former (c); and redesignated the remaining subsections accordingly.

The 2019 amendment inserted "civil" in (c).

16-123-336. Civil action.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Arkansas's Law on Punitive Damages (*Watkins v. Turner,* 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-338. Relief.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Arkansas's Law on Punitive Damages (*Watkins v. Turner,* 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-345. Incentives for self-testing and self-correction.

(a)(1) A report or result of a self-test, as that term is defined by rule of the Director of the Arkansas Fair Housing Commission, shall be considered to be privileged under subdivision (a)(2) of this section if a person:

(A) Conducts or authorizes an independent third party to conduct a self-test of any aspect of a residential real estate-related lending transaction or any part of that transaction by that person in order to determine the level or effectiveness of compliance with this subchapter by that person; and

(B) Has identified any possible violation of this subchapter by that person and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) If a person meets the conditions specified in subdivision (a)(1) of this section with respect to a self-test, any report or results of that self-test:

(A) Shall be privileged; and

(B) May not be obtained or used by the Arkansas Fair Housing Commission or any applicant, department, or agency in any:

(i) Proceeding or civil action in which one (1) or more violations of this subchapter are alleged; or

(ii) Examination or investigation relating to compliance with this subchapter.

(b)(1) No provision of this subchapter may be construed to prevent an aggrieved person, complainant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this subchapter is alleged, or in any examination or investigation of compliance with this subchapter if:

(A) The person to whom the self-test relates or any person with lawful access to the report or the results:

(i) Voluntarily releases or discloses all or any part of the report or results to the commission, aggrieved person, complainant, department, or agency or to the general public; or

(ii) Refers to or describes the report or results as a defense to charges of violations of this subchapter against the person to whom the self-test relates; or

(B) The report or results are sought in conjunction with an adjudication or admission of a violation of this subchapter for the sole purpose of determining an appropriate penalty or remedy.

(2) Any report or results of a self-test that are disclosed for the purpose specified in subdivision (b)(1)(B) of this section:

(A) Shall be used only for the particular proceeding in which the adjudication or admission referred to in subdivision (b)(1)(B) of this section is made; and

(B) May not be used in any other action or proceeding.

(c) An aggrieved person, complainant, department, agency, or the commission that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in:

(1) A court of competent jurisdiction; or

(2) An administrative law proceeding with appropriate jurisdiction.

History. Acts 2001, No. 1785, § 46; 2003, No. 1775, §§ 10, 11; 2019, No. 315, § 1324.

Amendments. The 2019 amendment substituted "rule" for "regulation" in the introductory language of (a)(1).

Subchapter 4 — Religious Freedom Restoration Act

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

16-123-402. Legislative intent.

CASE NOTES

Particular Cases.

Where state imposed statewide ban on solicitation activity at state revenue offices, plaintiff failed to show that the ban substantially burdened his sincere religious exercise or belief. Brown v. Ark.

Dep't of Fin. & Admin., 180 F. Supp. 3d 602 (W.D. Ark. 2016), aff'd, 674 Fed. Appx. 599 (8th Cir. 2017).

16-123-404. Free exercise of religion protected.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-1(a), 2000e-2(e)(2)) Exempting Activities of Religious Organizations from Operation of Title VII Equal Employment Opportunity Provisions. 6 A.L.R. Fed. 3d Art. 6 (2015).

Employer's Dress Policy as Religious Discrimination Under Federal Law. 12 A.L.R. Fed. 3d Art. 5 (2016).

CASE NOTES

Judges.

Arkansas judge did not state a plausible claim that Justices of the Arkansas Supreme Court violated this section by permanently barring him from presiding over death penalty cases based on his anti-death penalty statements and activities; Arkansas had compelling interests in the impartiality of the judiciary and in public perception of an impartial judiciary, and the judge did not allege any less restrictive means of furthering those compelling interests. In re Kemp, 894 F.3d 900 (8th Cir. 2018), cert. denied, 139 S. Ct. 1176, 203 L. Ed. 2d 199 (2019).

16-123-407. Exemptions.

The Division of Correction, the Division of Community Correction, a county jail, and a detention facility are exempt from this subchapter.

History. Acts 2015, No. 975, § 1; 2019, No. 910, § 970.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction".

CHAPTER 124

DRUG DEALER LIABILITY ACT

16-124-101. Title.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Drug Dealer Liability Acts. 12 A.L.R.7th Art. 2 (2016).

CHAPTER 127

STALKER LIABILITY ACT

16-127-102. Civil liability for stalking.

RESEARCH REFERENCES

ALR. Validity of State Stalking Statutes. 6 A.L.R.7th Art. 6 (2015).
Validity, Construction, and Application of State Civil Stalking Statutes. 14 A.L.R.7th Art. 4 (2016).

CHAPTER 129

UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

SECTION.
16-129-101. Short title.
16-129-102. Definitions.
16-129-103. Civil action.
16-129-104. Exceptions to liability.
16-129-105. Plaintiff's privacy.
16-129-106. Remedies.
16-129-107. Statute of limitations.
16-129-108. Construction.
16-129-109. Uniformity of application and construction.
16-129-110 — 16-129-112. [Reserved.]

16-129-101. Short title.

This chapter may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

History. Acts 2021, No. 420, § 1.

16-129-102. Definitions.

In this chapter:

(1) "Consent" means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(2) "Depicted individual" means an individual whose body is shown in whole or in part in an intimate image.

(3) "Disclosure" means transfer, publication, or distribution to another person. "Disclose" has a corresponding meaning.

(4) "Identifiable" means recognizable by a person other than the depicted individual:

(A) from an intimate image itself; or

(B) from an intimate image and identifying characteristic displayed in connection with the intimate image.

(5) "Identifying characteristic" means information that may be used to identify a depicted individual.

(6) "Individual" means a human being.

(7) "Intimate image" means a photograph, film, video recording, or other similar medium that shows:

(A) the uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) a depicted individual engaging in or being subjected to sexual conduct.

(8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) "Sexual conduct" includes:

(A) masturbation;

(B) genital, anal, or oral sex;

(C) sexual penetration of, or with, an object;

(D) bestiality; or

(E) the transfer of semen onto a depicted individual.

History. Acts 2021, No. 420, § 1.

16-129-103. Civil action.

(a) In this section:

(1) "Harm" includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

(2) "Private" means:

(A) created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or

(B) made accessible through an unlawful act.

(b) Except as otherwise provided in § 16-129-104, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) the depicted individual did not consent to the disclosure;

(2) the intimate image was private; and

(3) the depicted individual was identifiable.

(c) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under this chapter or that the individual lacked a reasonable expectation of privacy:

(1) consent to creation of the image; or

(2) previous consensual disclosure of the image.

(d) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

History. Acts 2021, No. 420, § 1.

A.C.R.C. Notes. The official version of the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act promulgated by the Uniform Law Commission contains "or threatened disclosure" in subsection (b) of this section.

16-129-104. Exceptions to liability.

(a) In this section:

(1) "Child" means an unemancipated individual who is less than 18 years of age.

(2) "Parent" means an individual recognized as a parent under law of this state other than this chapter.

(b) A person is not liable under this chapter if the person proves that disclosure of an intimate image was:

(1) made in good faith in:

(A) law enforcement;

(B) a legal proceeding; or

(C) medical education or treatment;

(2) made in good faith in the reporting or investigation of:

(A) unlawful conduct; or

(B) unsolicited and unwelcome conduct;

(3) related to a matter of public concern or public interest; or

(4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d), a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under this chapter for a disclosure of an intimate image, as defined in § 16-129-102(7)(A), of the child.

(d) If a defendant asserts an exception to liability under subsection (c), the exception does not apply if the plaintiff proves the disclosure was:

(1) prohibited by law other than this chapter; or

(2) made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(e) Disclosure of an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

History. Acts 2021, No. 420, § 1.

A.C.R.C. Notes. The official version of the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act promulgated by the Uniform Law Commission contains "or a threat to disclose" in subsections (b) and (e) of this section.

16-129-105. Plaintiff's privacy.

In an action under this chapter, a plaintiff may proceed using a pseudonym in place of the true name of the plaintiff under applicable state law or court rules.

History. Acts 2021, No. 420, § 1.

A.C.R.C. Notes. Arkansas adopted Alternative A of this section of the official version of the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act promulgated by the Uniform Law Commission.

16-129-106. Remedies.

(a) In an action under this chapter, a prevailing plaintiff may recover:

(1) the greater of:

(A) economic and noneconomic damages proximately caused by the defendant's disclosure, including damages for emotional distress whether or not accompanied by other damages; or

(B) statutory damages not to exceed $10,000 against each defendant found liable under this chapter for all disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount of statutory damages under subsection (a)(1)(B), consideration must be given to the age of the parties at the time of the disclosure, the number of disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors;

(2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and

(3) punitive damages.

(b) In an action under this chapter, the court may award a prevailing plaintiff:

(1) reasonable attorney's fees and costs; and

(2) additional relief, including injunctive relief.

(c) This chapter does not affect a right or remedy available under law of this state other than this chapter.

History. Acts 2021, No. 420, § 1.

A.C.R.C. Notes. The official version of the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act promulgated by the Uniform Law Commission contains "or threatened disclosure" in subdivision (a)(1)(A) of this section and "and threatened disclosures", "or threatened disclosure", and "or threatened disclosures" in subdivision (a)(1)(B) of this section.

16-129-107. Statute of limitations.

(a) An action under § 16-129-103(b) for an unauthorized disclosure may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence.

(b) Except as otherwise provided in subsection (c), this section is subject to the tolling statutes of this state.

(c) In an action under § 16-129-103(b) by a depicted individual who was a minor on the date of the disclosure, the time specified in subsection (a) does not begin to run until the depicted individual attains the age of majority.

History. Acts 2021, No. 420, § 1.

A.C.R.C. Notes. The official version of the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act promulgated by the Uniform Law Commission contains a subdivision (a)(2) of this section that reads "a threat to disclose may not be brought later than four years

from the date of the threat to disclose" and "or threat to disclose" in subsection (c) of this section.

16-129-108. Construction.

(a) This chapter must be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C. Section 230, as it existed on January 1, 2021.

(b) This chapter may not be construed to alter the law of this state on sovereign immunity.

History. Acts 2021, No. 420, § 1.

16-129-109. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 2021, No. 420, § 1.

16-129-110 — 16-129-112. [Reserved.]

A.C.R.C. Notes. Arkansas did not adopt Sections 10-12 of the official version of the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act promulgated by the Uniform Law Commission. Section 10 deals with severability, Section 11 deals with repeals and conforming amendments, and Section 12 deals with the effective date.

CHAPTER 130

GENDER INTEGRITY REINFORCEMENT LEGISLATION FOR SPORTS (GIRLS) ACT

16-130-101. Title.

This chapter shall be known and may be cited as the "Gender Integrity Reinforcement Legislation for Sports (GIRLS) Act".

History. Acts 2021, No. 953, § 1.

16-130-102. Legislative findings.

The General Assembly finds that:

(1) Like the United States Senate, the General Assembly recognizes that "athletic participation helps develop self-discipline . . . confidence, and leadership skills", S. Res. 398, 115th Cong. (2018);

(2) The same United States Senate resolution states that "opportunities for athletic participation should be available to all individuals," both male and female;

(3) The same United States Senate resolution also states that, although "the share of athletic participation opportunities of high school girls has increased more than sixfold since the passage of Title IX of the Education Amendments of 1972 . . . high school girls still experience . . . a lower share of athletic participation opportunities than high school boys";

(4) According to the same United States Senate resolution, disparities also still remain at the collegiate level;

(5) This chapter seeks to address these lingering disparities and, as stated in the same United States Senate resolution, "promote equality in sports and access to athletic opportunities for girls and women";

(6) To serve these goals, the General Assembly finds that there are "'[i]nherent differences' between men and women," borrowing the words of Justice Ruth Bader Ginsburg for a majority of the United States Supreme Court in United States v. Virginia, 518 U.S. 515, 533 (1996); and

(7) As Justice Ginsburg further said, these inherent differences "remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity".

History. Acts 2021, No. 953, § 1.

16-130-103. Definitions.

As used in this chapter:

(1) "Covered entity" means:

(A) An elementary school, high school, secondary school, or postsecondary school that is located in Arkansas and receives state funds;

(B) Any other school or institution that is located in Arkansas whose students or teams compete in interscholastic, intercollegiate, intramural, or club athletic teams or sports against an entity defined in subdivision (1)(A) of this section; and

(C) An entity that receives membership fees or any other funds from an entity defined in subdivision (1)(A) or subdivision (1)(B) of this section; and

(2) "Sex" means a person's immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth.

History. Acts 2021, No. 953, § 1.

16-130-104. Participation requirements.

(a) Any interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a covered entity shall be expressly designated for one (1) of the following groups based on sex:

(1) Males, men, or boys;

(2) Females, women, or girls; or

(3) Coed or mixed.

(b) Members of the male sex are prohibited from an interscholastic, intercollegiate, intramural, or club athletic team or sport that is expressly designated for females, women, or girls.

History. Acts 2021, No. 953, § 1.

16-130-105. Civil cause of action.

(a) The Attorney General may bring a cause of action for injunctive relief and any other relief available under the law or in equity against:

(1) A covered entity that knowingly violates this chapter; and

(2) The directors, officers, agents, and employees of a covered entity that knowingly violates this chapter.

(b) A court that finds a covered entity has knowingly violated this chapter shall, in addition to awarding any relief requested under subsection (a) of this section, enter an injunction barring the covered entity from receiving funds from any public source, including without limitation membership fees from a school, for a period of one (1) year.

History. Acts 2021, No. 953, § 1.